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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 740.

WILLIE JOHNSON, ALIAS WILLIE OVERTON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED JULY 5, 1894.

(16,626.)

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a In the circuit court of the United States for the western district of Arkansas.

Pleas and proceedings before the honorable Isaac C. Parker, judge of the district court of the United States in and for the western district of Arkansas, holding circuit court. In the case of United States vs. Willie Johnson alias Willie Overton, indictment for murder.

b *Indictment.*

United States of America, western district of Arkansas.—In the circuit court, August term, A. D. 1893.

UNITED STATES *vs.* WILLIE JOGHSON ALIAS WILLIE OVERTON and Sam Woodard.	Murder.

The grand jurors of the United States of America, duly selected, empaneled, sworn, and charged to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That Willie Johnson alias Willie Overton and Sam Woodard on the 12th day of July A. D. 1893, at the Creek Nation, in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one Sherman Russell, a negro and not an Indian, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said Willie Johnson alias Willie Overton and Sam Woodard, with a certain gun, then and there charged with gunpowder and one leaden bullet, which said gun they, the said Willie Johnson alias Willie Overton and Sam Woodard, in their hands then and there had and held, then and there feloniously, wilfully, and of their malice aforethought, did discharge and shoot off to, against, and upon the said Sherman Russell, and that the said Willie Johnson alias Willie Overton and Sam Woodard with the leaden bullet aforesaid out of the gun aforesaid, then and there, by force of the gunpowder
c aforesaid, by the said Willie Johnson alias Willie Overton and Sam Woodard discharged and shot off as aforesaid, then and there feloniously, wilfully, and of their malice aforethought, did strike, penetrate, and wound him, the said Sherman Russell, in and upon the left side of the breast of him, the said Sherman Russell, giving to him, the said Sherman Russell, then and there, with the leaden bullet aforesaid, so as discharged and shot out of the gun aforesaid by the said Willie Johnson alias Willie Overton and Sam Woodard, in and upon the left side of the breast of him, the said Sherman Russell, one mortal wound of the depth of four inches and of the breadth of half an inch; of which said mortal wound he, the said Sherman Russell, then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Willie Johnson alias Willie Overton and Sam Woodard him, the said Sherman Russell, in the manner and by the means aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, contrary to the form

of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

JAS. F. READ,
United States Attorney, Western District of Arkansas.

(Endorsed on back:) No. 78. United States vs. Willie Johnson alias Willie Overton & Sam Woodard. Witnesses: Anna Perry, Muskogee; Lewis Lunda, Muskogee, I. T.; Barbara Perry, Muskogee, I. T.; Wm. Herrod, Muskogee, I. T.; Rosa Lunda, Muskogee, I. T.; Queen Hawkins, Muskogee, I. T.; Shelton Russell, Muskogee, I. T.; Lindsay Russell, Muskogee, I. T.; Walter Anderson, Muskogee, I. T.; Jennie Horn, Muskogee, I. T. Filed in open court Oct. 19, 1893. S. Wheeler, clerk. By I. M. Dodge, D. C.

1 In the circuit court of the United States for the western district of Arkansas, August term, A. D. 1893.

FRIDAY MORNING, 8½ o'clock, *Oct.* 20, 1893.

Court met pursuant to adjournment. Present: The Hon. Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES
vs.
WILLIE JOHNSON ALIAS Willie Overton. } Indictment for murder, No. 78.

On this day come the United States of America by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorney, and having had hearing of said indictment and it being demanded of him concerning said indictment above specified, and charged upon him how he would acquit himself thereof, he says he is not guilty as charged in said indictment and puts himself upon the country.

(Caption omitted.)

On this day come the said defendant by his attorney and files his application in writing, verified upon oath, praying for witnesses in his behalf at the expense of the United States.

SATURDAY, *Oct.* 21, 1893.

(Caption omitted.)

On this day come on to be heard the application heretofore filed Oct. 20, 1893, by the said defendant praying for witnesses in his behalf at the expense of the United States, and the court being fully advised in the premises doth allow the same.

It is therefore ordered that the legal expense of procuring the testimony of Jane Morrison, Allen Morrison, Polly Overton, Francis Overton, Catch Lavance, John Green, Dave Roberts, and Sam Lewis,
2 in behalf of said defendant be paid by the United States, and that a subpœna be issued for them returnable Nov. 18, 1893.

NOV. TERM, 1893, TUESDAY, *Dec.* 5, 1893.

(Caption omitted.)

On this day, on motion of the district attorney, it is ordered by the court that this cause be, and the same is hereby, continued to the next term of this court, and set down for trial February 22, 1894.

FEBRUARY TERM, 1894, MONDAY, *Feb.* 27, 1894.

(Caption omitted.)

On this day come the said defendant, by his attorney, and files an additional application for witnesses in this cause, at the expense of the United States. It is therefore ordered by the court that the same be allowed for Lucy Perry and Emma Solomon, and that a subpœna be issued for them, returnable forthwith.

FRIDAY, *March* 2, 1894.

(Caption omitted.)

On this day come the United States of America, by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defendant, in custody of the marshal, and by his attorneys, Messrs. Frederick & Frederick; and it appearing from the returns of the marshal that the said defendant has been served with a duly certified copy of the indictment in this cause, and a full and complete list of the witnesses in this cause, and a full and complete list of the panel of petit jurors, as selected and drawn
3 by the jury commissioners for the present term of this court, more than two entire days heretofore, and having heretofore had hearing of said indictment and pleaded not guilty thereto, it is, on motion of plaintiff by its attorney, ordered by the court that a jury come to try the issue joined. Whereupon, after counsel for both plaintiff and defendant had exercised, in the presence of the defendant, their full right of challenge under the law, the following jurors were selected for the trial of this cause, to wit:

Geo. W. Barnes,	Jno. B. Crabtree,	Wm. A. Long,
Geo. B. Bookout,	John L. Elmore,	Laton D. Reeves,
Willis Black,	Lem B. Howard,	Albert M. Nowlin,
Elbert S. Cox,	Jesse N. Jones,	Squire Wallace,

Twelve good and lawful men of the district aforesaid duly selected, empaneled, and sworn to try the issue joined, and a true verdict render, according to the law and the evidence, and after hearing a portion of the evidence, and there not being time to further progress in the trial of this cause, they were put in charge of a sworn bailiff of this court. And it is further ordered by the court that said jury be kept together and that the marshal of this district furnish meals and lodging to said jury and bailiff in charge until discharged by order of said court.

SATURDAY, *March 3rd*, 1894.

(Caption omitted.)

On this day come the United States of America, by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defend-

ant in custody of the marshal, and by his attorneys, Messrs. Frederick & Frederick; and now come the jury heretofore empaneled for the trial of this cause, to wit:

4	Geo. W. Barnes,	Jno. B. Crabtree,	Wm. A. Long,
	Geo. B. Bookout,	John L. Elmore,	Laton D. Reeves,
	Willis Black,	Lem B. Howard,	Albert M. Nowlin,
	Elbert S. Cox,	Jesses N. Jones,	Squire Wallace,

Who took their seats in the jury box, and after hearing further evidence and there not being time to further progress in the trial of this cause, they were put in charge of the sworn bailiff aforesaid.

MONDAY, *Mch.* 5, 1894.

(Caption omitted.)

On this day come the United States of America, by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal, and by his attorneys, Messrs. Frederick & Frederick; and now come the jury heretofore empaneled for the trial of this cause in charge of a sworn bailiff of this court, to wit:

Geo. W. Barnes,	Jno. B. Crabtree,	Wm. A. Long,
Geo. B. Bookout,	John L. Elmore,	Laton D. Reeves,
Willis Black,	Lem B. Howard,	Albert M. Nowlin,
Elbert S. Cox,	Jesse N. Jones,	Squire Wallace,

Who took their seats in the jury box, and after hearing further evidence and there not being time to further progress in the trial of this cause, they were put in charge of the sworn bailiff aforesaid.

TUESDAY, *March* 6, 1894.

(Caption omitted.)

On this day come the United States of America, by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said
5 defendant in custody of the marshal, and by his attorneys, Messrs. Frederick & Frederick; and now come the jury heretofore empaneled for the trial of this cause in charge of a sworn bailiff of this court, to wit:

Geo. W. Barnes,	Jno. B. Crabtree,	Wm. A. Long,
Geo. B. Bookout,	John L. Elmore,	Laton D. Reeves,
Willis Black,	Lem B. Howard,	Albert M. Nowlin,
Elbert S. Cox,	Jesse N. Jones,	Squire Wallace,

who took their seats in the jury box, and after hearing the remainder of the evidence and argument of counsel and receiving the charge of the court, retired in charge of the sworn bailiff aforesaid to consider of their verdict.

WEDNESDAY, *March* 7, 1894.

(Caption omitted.)

On this day come the United States of America by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defend-

ant in custody of the marshal and by his attorneys, Messrs. Frederick & Frederick; and now come the jury heretofore empanneled for the trial of this cause in charge of a sworn bailiff of this court, to wit:

Geo. W. Barnes,	Jno. B. Crabtree,	Wm. A. Long,
Geo. B Lookout,	John L. Elmore,	Laton D. Reeves,
Willis Black,	Lem B. Howard,	Albert M. Nowlin,
Elbert S. Cox,	Jesse N. Jones,	Squire Wallace,

who returned into court the following verdict, to wit:

"We, the jury, find the defendant, Willie Johnson, alias Willie Overton, guilty of murder as charged in the within indictment."

(Signed) SQUIRE WALLACE, *Foreman.*

On motion of defendant's counsel the jury was polled and each
6 juror answered for himself that the verdict as read by the court was his verdict. Whereupon, by order of the court, the jury was discharged from the further consideration of the case and the said defendant was remanded to the custody of the marshal to await final sentence.

FRIDAY, *March* 9, 1894.

(Caption omitted.)

On this day come the said defendant, by his attorney, and files his motion to set aside the verdict of the jury and for a new trial in this cause.

THURSDAY, *May 3rd*, 1894.

(Caption omitted.)

On this day come the defendant in person and by his attorney, and presents his motion for a new trial; which motion is ordered to be filed in lieu of one filed March 9th, 1894, and that the same be filed now as for then.

FRIDAY, *May* 4, 1894.

(Caption omitted.)

On this day come on for final hearing the motion heretofore filed by the said defendant to set aside the verdict of the jury and for a new trial in this cause, and the court, being well and sufficiently advised in the premises, doth overrule said motion.

(Caption omitted.)

On motion of Jas. F. Read, esq., attorney for the western district
7 of Arkansas, the said defendant, Willie Johnson, alias Willie Overton, was brought to the bar of this court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury in this cause on the 7th day of March, 1894, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said. Whereupon the premises being seen and by the court well and sufficiently understood, it is considered by the court that the said Willie Johnson, alias Willie Overton, be deemed, taken, and adjudged guilty of the crume of murder, and it is ordered by the court that the said marshal of the district aforesaid cause the said Willie Johnson, alias Willie Overton, to be taken hence, and him, the said

Willie Johnson, alias Willie Overton, safely and securely keep from the date hereof until Wednesday, July 25th, 1894, and on that day, and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Willie Johnson, alias Willie Overton, to be taken to some convenient place within this district to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Wednesday, the 25th day of July, in the year of our Lord one thousand eight hundred and ninety-four, cause the said Willie Johnson, alias Willie Overton, to be hanged by the neck until he is dead.

And it is further considered by the court that the United States of America do have and recover all their costs in this prosecution laid out and expended, and that they have execution therefor. And the
8 clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal with a full and true account of the execution of the same.

(Caption omitted.)

Ordered by the court that defendant have thirty days in which to file bill of exceptions in this cause, and that the same be continued to the next term of this court.

MAY TERM, 1894, THURSDAY, *May* 31*st*, 1894.

(Caption omitted.)

Ordered by the court that the defendant have an extension of time to June 15, 1894, in which to file his bill of exceptions in this cause.

FRIDAY, *June* 15, 1894.

(Caption omitted.)

Ordered by the court that defendant have further time, to June 20, 1894, in which to file his bill of exceptions in this cause.

WEDNESDAY, *June* 20, 1894.

(Caption omitted.)

On this day come the defendant, Willie Johnson, in person and by his attorney, C. J. Frederick, esq., and tenders his bill of exceptions herein, and asks that the same be signed and made a part of the record in this case.

Whereupon the United States, by its attorney, Jas. F. Read, esq.,
9 objects to the signing of said bill of exceptions because the same does not comply with the rules of the Supreme Court of the United States, in this, that it sets forth the testimony of each witness in the case instead of setting forth simply what the evidence in the case tended to prove. Thereupon, after due consideration, the court overrules said objection, and it is ordered by the court that said bill of exceptions be signed and made a part of the record herein, which is accordingly done. To which ruling of the court the United States, by its attorney, at the time excepted.

(Caption omitted.)

On this day come the said defendant in person and by his attorney, C. J. Frederick, esq., and files his assignment of errors and petition for a

writ of error to the Supreme Court of the United States, together with his petition, supported by affidavit, praying for an appeal in this cause at the expense of the United States.

THURSDAY, *June 21st*, 1894.

(Caption omitted.)

On this day comes the clerk of this court and makes known that a writ of error taking this case to the Supreme Court of the United States has been issued by the said clerk.

It is therefore ordered by the court that execution of sentence heretofore pronounced in this cause be stayed pending the action of the Supreme Court.

10 *Bill of exceptions.*

In the United States circuit court, western district of Arkansas, February term, 1894.

UNITED STATES *vs.* WILLIE JOHNSON. } Murder.

Be it remembered that at this the February term, 1894, of said U. S. circuit court, came on to be heard the above-styled cause.

The United States to maintain the issue on its part offered, introduced, and examined the following witnesses, to wit: Annie Perry, Lewis Lundy, Queen Hawkins, Rosa Lundy, Walter Anderson, Jennie Horne, Lindsay Russell, Wm. Herrod, Shelton Russell, whose testimony was among other things as follows, to wit:

Annie Perry testified that she lived Okmulgee and that she knew defendant Willie Johnson, Sam Woodard, and deceased, Sherman Russell. That she had gone to church with Sherman Russell the night he was killed by Sam Woodard in July, 1893. That Russell was killed—shot by Sam Woodard—in the night, near Dave Roberts' house.

11 Rosa Lundy, Linsey Russell, Barbara Perry, and Will Herrod, and Charlie Vann were on ahead of the deceased and herself in the road. She first saw defendant and Sam Woodard that night sitting in churchyard. That deft. and Woodard left church after she and Russell did and passed them half a mile from the church; don't know where Woodard went, but deft. went on ahead of her and Russell. She and Russell turned off road to right to go home and defendant and others went on the road south toward Muscogee and she never saw defendant any more that night. After she and Russell turned off to go home and had got about 200 yards they met Sam Woodard ahead talking and cursing and he came up close to Sherman Russell and shot him and he fell. He then walked off five or six steps and whistled; he then came back and stood around Sherman and wheeled around and fired again, and I ran and told Linsey Russell that Sam Woodard had killed his brother, and after I got to them there were several more shots fired.

Lewis Lundy testified that he went to the church that night, that he saw defendant and Sam Woodard at the church in the yard lying down and talking. Saw them coming on behind us from the church locked

arms, talking. They both had pistols. The last I saw of Willie Johnson before the killing was at the forks of the road where we turned off to go home; he was standing in the road at the forks. We met Sam Woodard upon top of the hill. Annie Perry and Sherman Russell, the deceased, were behind us and Sam Woodard walked up meeting us and walked around us and went in towards Sherman and said he would whip every s'n of b't'h of a negro in the road. Then he fired and shot deceased, and then he stopped off a little and whistled and defendant came up and they both went to shooting at us.

12 One shot struck me. I didn't say anything about this deft. at Dave Roberts' that night. I said I was shot, but didn't say who shot me. No one said anything about the deft. there that night. Don't know when I first told that deft. was there. Have heard the defendant threaten to kill deceased several times before the night deceased was killed.

Queenie Hawkins testified that the defet. was her brother-in-law, having married her sister Lizzie. That she was with deft. the night of killing and had been to church that night; that deft. and Sam Woodard overtook her. Both had pistols in their hands and deft. told her he was going to hush deceased's mouth talking about him to-night, and was "going to put him so they will dig deep and drive slow with him before to-morrow morning." Deft. went on with me to forks of the road about mile and he stopped; we went on then, and in about 3 minutes we heard report of pistol, and deft. he shot his pistol in direction of where deceased was killed and ran in direction of where pistol was fired; defendant was at the forks of the road; I and defendant were in front of the crowd. I was along with Jim Hawkins and Lizzie, deft's. wife. Jennie Horne and Walter Anderson were right behind us. Lewis Lundy was with defendant's wife behind me and deft. Deft. went on road towards Muskogee; in about ¼ mile of Muskogee we went on to my home with Jim Hawkins, Jennie Horne, and deft. right behind us, and then we heard 2 shots fired. My home is about ½ mile from Dave Roberts' place, where Russell was killed. I heard about five shots in all that night. First heard 2 shots and then 3. Deft. fired 2 shots and he ran towards place of killing.

13 Rosa Lundy testified: Is wife of Lewis Lundy and was along when Russell was shot; saw defendant and Queenie Hawkins go up road toward Muskogee and we turned off and went to Dave Roberts' and Solomon's; we met Sam Woodard who shot Russell down and stepped off and whistled and deft. ran up and said shoot him again; then they both went to shooting towards us. Russell was shot right at Dave Roberts' house. It was but a few moments after Woodard shot Russell till deft. came up. At the forks of the road, as we came from the church, deft. and Queen Hawkins went on up road towards Muskogee; Jim Hawkins and Henrietta and Sam Lewis were there when they went off up road towards Muskogee. There was nothing said about deft. being there and shooting that night. They were asking who killed deceased, and we told them Sam Woodard did. Was at Dave Roberts' the next day and didn't tell people there that deft. had nothing to do with the shooting. I never told anybody till I told it on the stand that deft. had

anything to do with the shooting, not even the brother or father of the deceased, or my husband. Never told anyone that deft. was there that night.

Walter Anderson testified that he was along with the people coming from church night of killing. Saw deft. and Sam Woodard at church that night and heard them talking together. Heard Woodard say, "Sherman Russell, the d'd s'n of b't'h, we will kill him to-night," and deft. said, "Yes, I will go out one lane and you go other, and if I miss him you will get him, and if you miss him I will get him, and if you make first shot I will come to you and if I make first shot you come to me." They were on outside of church and I was at window about 5 steps of them. They were talking to themselves. As we came back
14 from church I was with Jennie Horne, and *and* we went on road toward Muskogee and the Lundys, Perrys, and Russells went off the forks of road that went to Roberts'. Deft. was about 200 yards from deceased was killed; he was standing with his arms folded, and we then passed deft. and we heard shots, and deft. started in fast walk and shot, and I never saw him any more. Witness also testified that the road from the church to Muskogee ran through prairie country—leading off from this road to right are two lanes; the first one leaves the road about 200 yards north of the second one, the second lane being nearer Muskogee by that distance. The first lane runs in a westerly direction for about 75 yards and *and* then runs south or southwest and leads up to the house of Lewis Lundy; the second lane also runs west, down to Lundy's house; that when witness heard the first shot fired in the direction of where deceased was killed that night, he was near defendant and saw him standing at the mouth of the second lane about 200 yards from where deceased was killed, and as soon as the first shot was fired, defendant started in the direction of where deceased was killed, in a fast walk and fired off his pistol.

Jennie Horne testified that she came from church night of killing and had seen deft. and Sam Woodard at church that night and saw them on the way from church. Deft. was alone; didn't see him with pistol. I was with Walter Anderson; deft. went on towards my house and we heard shot fired over towards Dave Roberts', and then deft. walked off towards that place and fired. Did not see him any.

Linsey Russell testified that he was brother of deceased; was at the church that night and saw defendant and Sam Woodard there. They were talking together; saw deft. and Sam Woodard on way from church; they were walking along with pistols in their hands, and they went
15 on to where road forked that led to Muskogee. Deft. was there, but did not see Woodard there. We went on towards Dave Roberts' and Solomon's, where we met Sam Woodard, who was cursing, and threw his hands behind and backed, with his face towards us, and when he got to my brother Sherman and pulled a pistol and shot him down. Sam Woodard then stepped aside and whistled, and I heard another shot in 2 or 3 minutes, and deft. run up and both fired at us and shot Lewis Lundy in leg; about 10 or 12 shots were fired. Deft. and Woodard went off. When deft. ran up he said to Woodard: "Shoot the dam*end* son of a bitch again." After the shooting as witness was going for a physician he passed within 8 or 10 feet of defendant and Sam Woodard and heard defendant say to Sam Woodard: "I wonder how many did

we kill," and Woodard said: "I know God damned well we killed two, because I shot one dead and I heard another one holler." They did not see me; it was dark.

The United States also introduced evidence to prove that deceased was a negro and not an Indian; that he was killed in the Creek Nation Indian country, and within the western district of Arkansas; that defendant died from a wound in the left side of his breast, caused by a shot from a pistol fired at him by Sam Woodard at the time and in the manner as alleged in the indictment.

The defendant to maintain the issues on his part introduced and examined the following-named witnesses: Francis Robinson, John Williams, Ketch Lorence, Polly Johnson, Sam Lewis, Charlie Vann, Lucy Perry, Dave Roberts, Jane Roberts, Emma Sullivan, Jennie Morris, Willie Johnson (the deft.).

16 Francis Robinson testified that she went to church the night of the killing with her brother—the deft. That she and deft. went into church together. Defendant was not outside of the church with Sam Woodard. As we went from the church the deft. was with Queenie Hawkins and I went home with John Williams, who did not go in, but went back to Muskogee.

John Williams testified that he was at church night of the killing. That he went to church with defendant and his sister, Francis Robinson. Did not see deft. and Sam Woodard together. I went home from church with Fannie Robinson and then went on to Muskogee and overtook the Perrys, Lundys, Chas. Vann, the Russell boys. Deft. and his wife were also along going toward Muskogee. Defendant, Lizzie, his wife, Queen Hawkins, Sam Lewis, Henrietta Hawkins, Ketch Lorence, and Polly Johnson, all went on straight road to Muskogee. It is mile from forks of road that turn off to go to Dave Roberts' to Muskogee. I heard the shooting that night about 100 yards from Sarah Thompson's house. Deft. Queen Hawkins and Lizzie were on ahead of me, going toward Muskogee when I heard the shooting. Walter Anderson and Jennie Horne were not in the crowd; I did not see Walter Anderson at all. I was a little over ¼ of mile from Dave Roberts' when I heard firing. Deft. was a few steps ahead of me when I heard the firing. I went on and caught up with him and we all walked on towards Muskogee together till we got to Queenie's house, and then I passed deft. and went on up in town.

Ketch Lorence testified that he went to the church that night with Polly Johnson and came back with her; deft. and Queenie Hawkins were along with us, and after we passed the forks of the road that turned to

17 go to Dave Roberts' I heard pistol fire. Deft. and Queen Hawkins, Sam Lewis, and Henrietta Hawkins were on ahead of us, going toward Muskogee. I did not see deft. have any pistol. I learned of the killing next morning from Lewis Lundy and his wife, and the Perry girls at Lewis Lundy's house, and not a word was said about deft. being at the killing or having had anything to do with it, but said that Sam Woodard did.

Polly Johnson testified that she was at church night of killing; that she went with Ketch Lorence from Muskogee; that she came back from the church with Ketch Loren, deft., Lizzie, his wife, Queenie Hawkins, Sam Lewis, and John Green and Henrietta Hawkins; did not see Walter

Anderson and Jennie Horne; heard the shooting about ½ mile, or about mile before we got to Muskogee; deft. went on to town with Queen Hawkins; we were about 200 yds. from the shooting when we heard it.

Sam Lewis testified that he was at the church the night of the killing; that he went back from church to Muskogee with Henrietta Hawkins; deft., Lizzie, his wife, and Queen Hawkins were along the road with us—ahead of us; we heard the shooting; we were about 300 yards from it; heard 4 or 5 shots fired; deft. was right ahead, in talking distance, when we heard the shooting over at Roberts', behind us, and defendant went on down to where the killing was done; deft. went on then with us; Linsey Russell, deceased's brother, told me about the killing up in town that night; he told me Sam Woodard had killed his brother, and I went down in town with him; he did not say a word about deft., or that deft. had anything to do with the killing; we went after old Dr. Frite, and went back with the dr.; heard all the Perrys and Lewis Lundy and
18 his wife talking about the shooting, and not a word was said about deft., but all said that Sam Woodard did the shooting; I never heard anything about deft. having anything to do with shooting till he was arrested.

Charlie Vann testified that he lived with Dave Roberts and was at the church the night of the killing and came back with the crowd from the church; that he wnet to the church that night with Lucy Perry, who also lives at Dave Roberts'; saw deft. in the church; saw Sam Woodard outside at church; saw deft. on way back from the church; he was with Queen Hawkins and the crowd, consisting of Lewis Lundy, Lizzie Johnson, Ketch Loren, Polly Johnson, Barbara Perry, Annie Perry, Linsey Russell, and others. Defendant and Queen Hawkins went along toward home till they got out of sight of me at the forks of the road where the roads leave main road to go to Dave Roberts'; they went on straight towards Muskogee; did not see Sam Woodard or Lucy Perry as we went home; first saw Sam Woodard near Dave Roberts'; Sam Woodard met Lewis Lundy and his wife, and Lewis and Sam talked together, and Sam went side of road and went around us and got in the road and started off, and Lewis Lundy started after him and Sam went on up the road a little piece and said, "I'll whip every one of you s—n of b—t'h of you, and Linsey Russell said, "You don't mean me, do you, Woodard?" and Woodard said, "every d—d s—n of b—t'h of you." Linsey Russell started after him and Rose Lundy grabbed him, and while they were scuffling around there Woodard went up the road and shot Sherman Russell. He went 25 or 30 steps to where Sherman Russell and Annie Perry were and shot Sherman Russell, and Annie Perry came running and said Sam had killed Sherman. Just about the time she had got to crowd Sam made another shot and shot Lewis Lundy in the leg. Sam staid
19 there about a minute and went down the hill past Solomon'. There were 5 or 6 shots fired. Deft. was not there. Only one man did the shooting. Did not see deft. there that night; did not hear any one say a word there that night about deft. Heard Lewis Lundy, his wife Rosa, the Perry girls talking about shooting, but heard not a word about defendant. Never heard that defendant was accused till next day after he was arrested.

murder was committed. When you have found that, if you do find it from this testimony, and find it to that degree of certainty that I have named as proof beyond a reasonable doubt, your next duty is to see what relation this defendant bore to that killing, what was his attitude towards that proposition, or towards that act. He is charged as being a joint participant in that crime. It is not claimed by the Government that he with his own hand fired the fatal shot from the pistol held in his hand that took the life of Sherman Russell, but it is claimed that while it was done by another, the other party named in the indictment as the party who was jointly guilty with defendant, or alleged to be, Sam Woodard, that while he was there doing that this defendant was so connected with that act as that, under the law, he is held to a guilty responsibility. Now, it is for you to say whether or not that was so. You can only know that, you can only ascertain it, first, by going to the facts and finding out what the truth is, and secondly, by looking to the law to see how a man must be connected with an act of that kind before he can be held to be guilty, or to be held to a guilty responsibility for the act. Now, we proceed to take up psopositions of that character—and there are several of them—there are several conditions that may affect a man in the eye of the law in such a way that he is responsible for the act done. If the act is done by him with his own hand, if the mechanical act performed is his mechanical
24 act, and it is a criminal act, then whatever criminal responsibility is attached to that act he becomes responsible for. That is one condition of case where there would be guilt. It is the first one, but it is not the only one. The law says that if the defendant was knowingly and understandingly present while Sam Woodard was committing this act, charged to be murder, and that while so situated with reference to the place where it was done, the defendant knowingly and wilfully aided, assisted, or abetted Sam Woodard in doing that act, that he becomes responsible. The law again says that if he was present at that place knowingly and wilfully—that is, knowing the purpose of Woodard in this case—he present at the place of the crime, and while so present he is there for the purpose of assisting, or abetting, or advising, or counselling Woodard in the commission of the act, should it be necessary, to consummate it, though, as a matter of fact, he may not aid, he may not abet, he may not assist, he may not counsel, he may not advise, because the killing is done without his assistance, or without his advice, or without his abetting; but if he is knowingly, and intelligently, and wilfully there for the purpose of aiding, or assisting, or advising, should it become necessary, the law says that he is then a participant in that crime just as much as though he had with his own hand sent the hissing hot bullet to the heart of the victim.

He is a participant in it then, and the law makes him just as responsible as though he had done the whole thing with his own hand. Now, I have stated to you that if he was wilfully present, and was there wilfully and actually participating, or was there for the purpose of becoming an actual participant, that he becomes responsible; that condition, of course, being wilful/ upon his part, being an intentional one upon his part.
25 It now becomes necessary to give you what is meant by being present at the place of the crime. There is two kinds of presence that the law recognizes; there is actual presence, there is real presence,

which means right at the place where a crime is committed, or there is constructive or legal presence, which means so near to the place where the crime is committed as to be able to assist in the commission of it, and to be actually assisting intentionally and knowingly, or to be so situated with reference to the killing as to be able to assist or to abet intentionally or knowingly the crime as committed. That is called in the law constructive presence. It is, legally speaking, the same as real presence. The test of that presence is that he was so near to the place of the killing as to be able to assist or advise or counsel or abet the act as done. Then there comes in another sub-division, and that relates to how this assistance may be rendered, how it may be afforded the party who does the killing, but let us see a moment as to what is meant by this idea of constructive presence. The law says that all persons who are knowingly and intentionally present at the time of the commission of a crime, for the purpose of assisting in its commission, although only one commit the act, provided all are proven to have confederated and engaged in the common design of which the perpetration of the crime is a part, become guilty of the crime as charged. This doctrine of criminal combination is firmly established in our criminal jurisprudence, and the cases furnish numerous illustrations. All are held responsible, because the will of each individual contributed to it; each intended that the crime should be perpetrated. Now, what in the sense of the law is meant by being present, aiding and abetting? It is
26 stated in Foster's Crown Law that "when the law requires the presence of the accomplice at the perpetration of the fact in order to render him a principal it does not require a strict, actual, immediate presence, such a presence as would make him an eye or ear witness of what passeth. Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned to him; some to commit the fact, others to watch at proper distances and stations to prevent a surprise or to favor, if need be, the escape of those who are more immediately engaged. They are all—provided the fact be committed—in the eye of the law present at it, for it was made a common cause with them, each man operating in his station at one and the same instant, towards the same common end, and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to secure the success of their common enterprise."

In the case of the State vs. Ponyier, decided by a Louisiana court, it was said:

"The test to determine whether he is a principal rather than an accessory is whether he is so situated as to make his personal help available; not actual physical help, necessarily, but help of any kind; not help rendered in or by actual presence, but constructive presence as well. Thus, if he watched near by or at a distance to prevent his companions being surprised, or stationed himself to give the alarm to favor their escape, or was in such situation as to come to their assistance, so that the knowledge of his watching or position or situation inspired, or was calculated to inspire, his companions with additional confidence, and enable them
27 the quicker or safer or more effectually to commit their crime, then he is a principal." "Each person consenting to the commis-

sion of an offence and doing any one act which is an ingredient in the crime, or immediately connected with or leading to its commission, is a principal."

Now, a little further upon this subject. This subject has received special consideration in three noted American cases. In the case of Commonwealth v. Knapp, tried many years ago, in 1830, in the State of Massachusetts, where Daniel Webster was prosecutor, and where he delivered his celebrated speech on murder. The party who was convicted in that case, who was being prosecuted by Webster, was a party who was alleged to have been constructively present at the place of the crime. Another great case in which this doctrine was declared was the celebrated trial in 1807, at Richmond, Va., of Aaron Burr, where the greatest jurist, the greatest man who ever sat on the bench in this country, presided at the trial—Chief Justice John Marshal—and where he recognized fully and entirely this doctrine of what is called constructive presence, and the doctrine that a man may aid another in the commission of a crime without doing any actual physical act that contributes to that result. Another celebrated case where this doctrine has been recently recognized was a case tried but a few years ago in Chicago, the case of the State against Spies, and which case was carried to the supreme court of that State, where the doctrine enunciated by the trial judge was clearly and distinctly sustained. Now, the court, in the case of the Commonwealth vs. Knapp, repeats the doctrine I have already read you as quoted from Foster's Crown Law, where it is said that "when the law requireth the presence of the accomplice at the perpetration of the fact, in order to render him a principal, it doth not require a strict, actual, immediate presence, such a presence as would
28 make him an eye or ear witness of what passeth. Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him; some to commit the fact, others to watch at proper distances and stations to prevent a surprise or to favor, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law present at it; for it was a common cause with them; each man operated in his station at one and the same instant towards the same common end, and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprise." "In order to render a person an accomplice and a principal in felony, he must be aiding and abetting at the fact, or ready to afford assistance if necessary."

"Being present in judgment of the law is equivalent to being actually present, for, says Hawkins, 'the hope of their immediate assistance encourages and emboldens the murderer to commit the fact, which otherwise perhaps he would not have dared to do, and makes them guilty in the same degree (as principals) if they had actually stood by, with their swords drawn, ready to second the villainy.'

"The person charged as a principal in the second degree must be present; and he must be aiding and abetting the murder. But if the abettor, at the time of the commission of the crime, were assenting to the murder, and in a situation where he might render some aid to the perpetrator, ready to give it if necessary, according to an appointment or agreement

with him for that purpose, he would, in the judgment of the law,
29 be present and aiding in the commission of the crime. It must, therefore, be proved that the abettor was in a situation in which he might render his assistance, in some manner, to the commission of the offense. It must be proved that he was in such a situation, by agreement with the perpetrator of the crime, or with his previous knowledge consenting to the crime, and for the purpose of rendering aid and encouragement in the commission of it. It must also be proved that he was actually aiding and abetting the perpetrator at the time of the murder, and in a situation in which he might render any aid by arrangement with the perpetrator for the purpose of aiding and assisting him in the murder, then it would follow as a necessary legal inference that he was actually aiding and abetting at the commission of the crime. For the presence of the abettor under such circumstances must encourage and embolden the perpetrator to do the deed by giving him hopes of immediate assistance; and this would in law be considered as actually aiding and abetting him, although no further assistance should be given. For it is clear that if a person is present aiding and consenting to a murder of other felony, that alone is sufficient to charge him as a principal in the crime. And we have seen that the presence by construction or judgment of the law is in this respect equivalent to actual presence."

You will find by weighing these cases which I have read that there are two propositions involved here; one is as to what is meant by presence at the place of the crime, and the other is as to how a man may aid another in the commission of a murder, or in the killing of another. You naturally inquire whether he must give some actual physical aid, or whether he
can be held reponsible if he is present at the place of the crime
30 really, actually, or constructively, or legally; whether or not he can aid in the commission of the crime in any other way than by giving actual physical aid, by rendering actual physical assistance to the commission of the crime.

The court then charged the jury as follows:

Now, a word further as to this idea of what is meant by constructive presence. I have already told you that the test is that if a man is so near to the place, no matter how far in feet or yards he may be away, if, from the circumstances, from the character of the act done, and the way it is done, he is so near to where it is actually done as to be able to render assistance, or to contribute to the production of that act, and he is there actually doing so or is there ready to do so wilfully and intentionally, present in pursuance of a previous agreement, and he confederated to render aid and assistance, he is then present in the law. As an illustration, take the case decided in Nevada, State vs. Hamilton (13 Nev., 386), where the man was 30 odd miles from the place where a stage was robbed; he built a fire on the top of a mountain to signal to his confederates the approach of the stage, they being down in the valley waiting to rob it. He was arrested as a principal in that crime, though as a matter of fact at the time of the robbery he was 30 or 35 odd miles away, but the law said he was present, because the test of the law as to what is meant by presence is fully satisfied, because the proof showed that he was able to render assistance that looked towards the consummation of that crime, towards the completion of it, towards the execution of it.

Another case: Breeze vs. State (12 Ohio State, 146). A man goes to a store kept in the country, and decoys away the clerk who slept in
31 that store, decoys him to go to a dance some miles distant from the store, and detained him at the dance while his confederates robbed the store.

To the giving of which charge the defendant at the time excepted.

As a matter of fact by yards or rods he was a long distance away from the place of the robbery, but in contemplation of the law he was present, because, at the very time of the robbery, he was able to render assistance, and was actually rendering assistance by decoying the clerk away from the store, and decoying him away with the purpose in view that his confederates should have a better opportunity to consummate the crime. I give you these cases as illustrations of what is meant by constructive presence. It means that the party was so near to the place of the crime as to be able in some way to assist, to render some of this assistance that by the law is recognized as aid, or as assistance towards the commission of the crime. That is what is meant in the law by presence.

We now come to the other proposition. Bare presence alone, either real or constructive, can not make a man a criminal. You will bear that in mind, because it happens sometimes that a man is murdered in the presence of hundreds or thousands of people; they are present, but they lack that great criminal element known as intent, known as a condition of the mind, and they are not responsible. He must have intent to make him guilty of a crime. We do not as a rule in this country punish intent alone, because we are jealous of the rights of men. We do not want to see them convicted or punished, unless it can be done with that degree of certainty that we have an abiding faith to a moral certainty that it is rightfully done.

32 Now, the propositions going to show how a party may aid another relate to a state of case where the party may be either actually and really at the place where the killing occurs, or constructively at it, so near to it as to be able to assist in its commission. They relate to either one of these conditions. In the first place, I have told you that if a man with his own hand does an act that is a crime he becomes a criminal, and he is responsible. There is no question about that. If another wilfully and intentionally is present at the place of that crime and by some physical act upon his part wilfully aids in its commission, he contributes to the deadly result, you have in that state of case actual presence, and the doing of an act that is real and actual, and that is overt in its character, and that which is known as a physical act, and one which contributes to the deadly result. Now, if he is there at the place of the crime actually and really, and he is there wilfully and knowingly for the purpose of aiding by doing some physical act, or assisting or abetting the crime by an act of that character, the law says he is just as guilty as though he had done the act, and just as guilty as if he had done the whole thing himself, because you have an overt act there; you have something that you can lay hold of to tell what the condition of his mind was. And again, if he is constructively present, and while so situated with reference to the crime he knowingly and understandingly or wilfully, by doing some physical act, aids or assists or abets in the commission of the crime, he is just as responsible as though he was right at the place and done the whole thing himself.

33 If he is so constructively present, knowingly, and understandingly or wilfully, for the purpose of aiding or abetting or assisting the crime by the doing of some physical act—by the use of some violence is what I mean by some physical act—he is just as responsible as though he had been actually at the place and had committed the whole thing himself. But we naturally inquire whether assistance can be rendered in any other way than by committing the act of physical violence that contributed to the result. Let us see.

The court, among other things, charged the jury as follows:

If the presence of the defendant in this case at the place where the proof shows he was, was by previous agreement or concert with Sam Woodard, and it was the purpose on his part to assist, aid, or abet the killing of Sherman Russell, and he was there wilfully and knowingly for the purpose, if it should be necessary, of assisting Sam Woodard in killing Sherman Russell, and the knowledge on the part of Woodard of the presence of defendant at the place where he was for the purpose of assisting him in killing Sherman Russell emboldened his purpose and encouraged his heart, or afforded him hope or confidence in his enterprise, or spurred on his mind to do the act, or nerved and strengthened his arm to fire the pistol shot, then the defendant would be present aiding and abetting the killing. He may not have done any actual physical act, but if his relation to the act was of the character that I have just named, that relation was a criminal relation on his part, it was a relation that sprung out of a preconceived design between Woodard and the defendant to take the life of Sherman Russell, and if such a presence for the purpose of

34 aiding or assisting or abetting, should it *it* become necessary, exerted a mental influence upon Woodard so that he the more readily or quickly executed the act, the defendant would then be present at the crime; whether he was really and actually at the place, or whether he was so near to the place as by the means I have described to exert an influence of that character upon the mind of Sam Woodard, he would then be present at the crime, and he would be an actual participant in it. If at the time Sam Woodard shot at and killed Sherman Russell the defendant was constructively present at the place of the killing, and he was at such place with the intent to wilfully and knowingly assist Sam Woodard in killing Russell, should it become necessary, to consummate the deadly purpose, but that such aid was not necessary, as Woodard did the killing without such help, then such constructive presence with such purpose would be a legal presence, and would make the defendant a participant in the killing.

To which charge the defendant at the time excepted.

Now, I read to you again from the case of Commonwealth v. Knapp, upon this question of how a party may be aiding another either by doing some act of physical violence, or being ready to do some act of the character which contributes to the deadly result:

"If the abettor were consenting to the murder, and in a situation in which he might render any aid, by arrangement with the perpetrator, for the purpose of aiding and assisting him in the murder, then it would follow as a necessary legal inference that he was actually aiding and abetting at the commission of the crime.

"For the presence of the abettor under such circumstances must encourage and embolden the perpetrator to do the deed, by giving him hopes of

immediate assistance; and this would in law be considered as actu-
35 ally aiding and abetting him, although no further assistance should be given. For it is clear that if a person is present aiding and consenting to a murder or other felony, that alone is sufficient to charge him as a principal in the crime."

Now, I do not hesitate upon this question to read even from the speech of counsel, defining what is meant by assistance that may operate mentally upon the party who does the act—counsel so eminent as was Mr. Webster, counsel who enunciated the law so clearly in his address to the jury that it was substantially given by the court charging the jury in that case. He said:

"If, then, the aid be anywhere so as to embolden the perpetrator, to afford him hope or confidence in his enterprise, it is the same as though the person stood at his elbow with his sword drawn. His being there ready to act, with the power to act, is what makes him an abettor."

Again:

"If the party is present, so present, and it is upon agreement, if he is actually at the place of the crime, or he is constructively present at it, upon agreement between two parties to commit a deadly crime, to commit murder, and if the presence of the party who does not with his own hand fire the fatal shot emboldens the purpose and encourages the heart of the murdered by the hope of instant aid, if aid should become necessary, then, without doubt, he was present, aiding and abetting, and was a principal in the murder."

Now, I think I have sufficiently given you the law showing how more than one man may be a participant in a crime, may contribute to that act so as to be responsible for it.

The court, among other things, charged the jury as follows:

If he is present actually or constructively at the time of the com-
36 mission of the crime, and is so situated with reference to it, and while so situated wilfully and intentionally, knowing the purpose of the man who strikes the deadly blow or fires the fatal ball, and while so situated, he there wilfully and intentionally aids, either by doing some physical act or by being present at that place by reason of a previous agreement, and the very fact of that presence exerts an influence upon the mind of the party who fires the fatal shot, showing that he the more readily or quickly does the act, then he is present at the place and is actually an aider and abettor and is a principal in the crime.

To which charge the defendant at the time excepted.

If he is so situated with reference to it—that is, actually or constructively present—for the purpose wilfully and knowingly and understandingly of rendering any physical aid, or to render the kind of aid that may operate upon the mind of the party in the way I have described to you, as read from the law, he is so situated, I say, and with the purpose in view he is just as responsible as though he had committed the deadly act himself.

The court, among other things, charged the jury as follows:

Now, the fact that there is a joint participation in a crime in any one of these ways implies that there is an agreement to engage in it, and that agreement may be entered into cotemporaneous with the doing of the act. If that exists, that is what is called a conspiracy in the law, an agreement

to do a wrongful act, an agreement to take a human life. That is called a conspiracy, and in this kind of a case it would be called a conspiracy to commit the crime of murder That underlies every case where there is participation in a crime. When that is established it necessarily shows a will to participate in it, because if two men agree to murder a third man, that shows a will to do the deed, and if that act is consummated while the parties remain a part of that conspiracy it is their act; if they are connected with it in any one of the ways I have named here—that is, if one actually does it with his own hand and the other is wilfully or knowingly, in pursuance of a previous agreement, present at the place and in some way aiding or abetting or assisting in its commission, or is there for the purpose of assisting. Now, it is necessary to find that that state of case exists. You can not find conspiracy by any written document that you may get hold of, because men do not go into it in that formal way. A conspiracy may be entered upon either expressly or *or* tacitly, the law says. Two men, in other words, by so ma'y words expressly may agree to commit murder. In this case, if you find that the evidence sustains the position or theory asserted by the Government, that Sam Woodard and this defendant entered into an agreement at the church or elsewhere to take the life of Sherman Russell, that would be entering into it by so many words. It is not necessary that it should be proven to have been entered into by words, however. If one man knows the purpose of another, and he knows that other intends to commit some crime—for instance, the crime of murder—and he joins with him with the intent of aiding him and keeps with him until the murder is committed with said intent, by the fact of his in some way aiding, advising, assisting, or abetting the crime, being actually or constructively present at it, he is then a part of the conspiracy just as much as though he had entered into it in writing or in so many formal words.

37

To the giving of which charge the defendant at the time excepted.

38

The court, among other things, charged the jury as follows:

In a country where there is a recklessness of human life, where men are careless of human life, sometimes their purpose is heard by others; sometimes they enter into that spirit recklessly; sometimes they act as though it was a spirit of bravado that prompted them; and when that is the case you are to take their declarations for what they are worth, going to show a purpose of that kind. If they are telling the truth, if they are purposely uttered, if they are wilfully uttered, you may take them into account as evidencing an agreement to do an act of that kind; but as to whether it was intended or not, you have a right to go to the very result that transpired, to the very fact of killing, because that is an evidence of whether the threat is intended or not. If threats were made jointly by this defendant and Sam Woodard, that they were to kill Sherman Russell, you are to see whether these threats were deliberate, whether they were intentional, whether they were premeditated, and in doing that, I say, you may go to the very result; you may see whether they were followed up by an act indicated by the character of the threats. You may look at it in that way. You, in other words, can only find the existence of a conspiracy, as a rule, by circumstances evidencing that conspiracy. You are to take the association of the parties together there, their relation to each other, their conduct at the time of the doing of the act, their proximity

to each other at the time, the declarations uttered by them in the presence of each other, the conduct of this defendant, if it was unnatural and unreasonable, and not consistent with the theory of his innocence after the killing—his not even going to the body, or anything of that kind—that is a circumstance to be taken into account, if it was not unnatural or
39 unreasonable under the circumstances, it is a circumstance that would not amount to anything.

To the giving of which charge the defendant at the time excepted.

The court, among other things, charged the jury as follows:

If you find there was evidence establishing this conspiracy between the defendant and Sam Woodard that goes to show a premeditated purpose to kill, it goes to show the doing of a willful act upon the part of the defendant, as well as upon the part of Sam Woodard, that resulted in the death of Sherman Russell. You are to look at all these facts and circumstances, to see whether or not these parties entered into a purpose of this kind. Now, if they started out upon a mission of that character, in pursuance of an agreement of that character, and one took his position at one point that he might come across or intercept the man that was sought to be killed, and another at another point 200 or 250 yards distant from where the killing occurred, that he might intercept Sherman Russell there, and kill him there if he went that way, then you would have evidence going to show a preconcerted design to take the life of Sherman Russell; you would have a state of case that under the law would show the presence of the defendant at the place of the killing, and so near as that he would be constructively present.

To the giving of which charge defendant at the time excepted.

The court, among other things, charged the jury as follows:

If in pursuance of a previous agreement to take the life of the man killed he was at the place, and while so situated he was actually
40 and really doing some physical act that might aid or assist or abet the man Woodard in the killing of Russell, he would be present at the place of the crime, and he would be contributing to the result by the doing of a physical act. If they had agreed to do this act beforehand, and they had started upon this mission, and had taken their stations designated by the witnesses at these respective places, and if at the time that Woodard killed Russell the consciousness upon his part that there was a man who was in reach and ready and willing to assist him in the perpetration of the act if necessary, or ready to do it himself if the opportunity offered—if that consciousness caused him the sooner to pull the trigger, caused him the sooner to shoot, caused him to kill sooner than he would have done if there had been an absence from the place of defendant, who was acting in harmony with him towards the consummation of this act, then defendant would be present at the place of the crime, he would be aiding in its commission by the rendition of the acts done by him and that kind of assistance that operated on the mind of the man who did the act with his own hand.

To the giving of which defendant at the time excepted.

You are to look at all these facts and circumstances. These are the propositions of the law that have been discussed in this case, that have been invoked.

You are to see to it whether or not by the light of the principles of the law that I have given you the defendant was so connected with the crime as that he is to be held responsible for it. If he was, your duty—if you are satisfied of that state of case beyond a reasonable doubt—would be to convict him, because it would be the crime of murder he would be guilty of—he, as well as the man who, with his own hand, fired the pistol.

41 If he is not connected with it in that way, or it is not proven beyond a reasonable doubt, your duty would be to acquit him as not being connected with the crime, enormous and wicked as that crime may be.

Now, you go to the other proposition in the case, and that is one which makes it your duty to find out the truth of this case, to find out what has been established here, in such a way as that you can depend upon it as being reliable and being truthful. There are certain rules that the law gives you that direct you as to how you shall weigh the evidence of witnesses. You take a witness who appears before you; you take the very bearing and conduct of that witness in your presence; you take the very manner of that witness in giving his evidence; you take the character of the story narrated by that witness; you bring to bear your observation, which constitutes largely your wisdom, which enables you to deal justly and properly with the statements of witnesses, and you apply that wisdom to that story and thus see whether it is consistent or not; you bear in mind that the truth is always consistent substantially; and if the statement is consistent in all of its parts, that is an indication of its being true. That is a fact you can depend upon because of what I have uttered. You see whether it harmonizes with that which would be reasonable and natural under the circumstances. Then you do not stop there, because you are to see its consistency when viewed in its own light as well as in the light of other facts you find to be true in the case. If there are truths in the case, you can use them as proving things, as things that go to prove something which we are hunting for in the case, and you can use them to see if other statements are true or not, upon the principle that all truths must harmonize; they must be in exact harmony with each other.

42 Then, look at the evidence in that way, at its very harmony, at its very consistency, reasonableness, and probability. You consider the means that witnesses had for knowing the facts, the character of the observations made by these witnesses, whether they could make them intelligently, as they were situated, whether they applied the opportunity they had in making them, whether they have substantially stated the facts as they occurred as seen by them. Then, again, you may go to the motive of witnesses. Witnesses may have a motive in a case because of interest, or because of feeling, and if they have it is your duty to weigh that fact as against their evidence. If they have not any motive of that kind, no more than witnesses usually have who go into court upon the one side or the other, then there would not be anything that would go against their evidence on account of their motive. If they have a large interest in the result of the case, you are to look at that, not that you necessarily discard what they say, because notwithstanding that interest a man may tell the truth, but still he is not so apt to adhere to the truth as he would be if there was no interest in the case on his part. If the interest is a very

great one, if it is a very large one, it is more apt that he would be swayed, it might be unconsciously, away from the truth than if such interest did not confront him. You are simply to weigh that evidence in connection with the statements of the other witnesses in the case whether it is the defendant or anybody else.

The court, among other things, charged the jury as follows:

The defendant goes upon the stand before you to make his statement; tells you his story. Above all things in a case of this kind you are to see whether that statement is corroborated substantially and reliably by
43 other reliable proven facts; if so, it is strengthened to the extent of its corroboration. If it is not strengthened in that way, you are to weigh it by its own inherent truthfulness, its own inherent proving power, the proving power that may belong to it.

To the giving of which defendant at the time excepted.

The law says you are to find out what is the truth. If there is a conflict in the evidence, you are to reconcile that conflict upon the theory of an honest mistake, if you can, but if you can not do that, you are to find where the truth lies, because your duty in your search for the truth is greater than your duty that calls upon you to reconcile conflicting statements. You are to do that if you can, but you must fasten your faith to the truth, and you must find what it is, and then determine this case according to that truth according to your best judgment, applying to that truth the law I have given you. The law says that absolute certainty in theses cases can not be obtained. When we come to prove propositions growing out of human conduct we can not demonstrate them, we can not prove them as we can prove that a straight line is the shortest distance between two points, or that two and two make four, but we can only prove them to a degree of certainty which is that practical degree of certainty that men act upon usually in matters of great concern and importance. That is said by the law to be proof beyond a reasonable doubt, or so that there is driven out of the case any and all reasonable doubts, or doubts for which good reasons can be given, or so that the case is established in such a way that you as reasonable men, having no desire in the case except to obtain a just conclusion, a conclusion that satisfies your minds to
44 that degree of certainty that you as citizens if the case had been presented to you would act upon it. What I mean by that is this: Every citizen is called to act when he is in the jury box as he would if this case had been presented to him with these facts and this law, and you knowing your duty, being conscious of it, if you were so situated that you would perform that duty as a citizen, take upon yourselves the responsibility of performing it, then that is proof beyond a reasonable doubt, because there would be no duty confronting you to be performed until the proposition was established beyond a reasonable doubt, or so that there is no longer in the case a real, substantial doubt of guilt, flowing naturally and reasonably to your minds from the whole proof in the case, from the whole of the evidence in the case, that you find to be reliable and true. If there is not that kind of doubt in it, there is no other kind of doubt that you are to regard; but, on the contrary, there would be the opposite of that state of case, a state of case where it would be proven and established beyond a reasonable doubt. Then, I say to you, look to this evidence, look to this proof, find out what is the truth, and look to the principles of

the law I have given you; find the truth of the case, and make an application of that law to that truth, and solve the problem in that way. If you are then satisfied beyond a reasonable doubt, as I have defined it, that the defendant was a participant in this crime, in any one of these ways I have named, your duty is to convict him, and in that way uphold the dignity, supremacy, and power of the law in this land, enacted for the safety of the rights of each citizen, and especially his right to his life; on the contrary, if no law has been violated your duty equally as great is to vindicate the law by discharging the defendant.

45 (Here a paper was handed court by counsel for defendant.)

There is one other proposition that I have omitted in connection with the law of conspiracy, and I feel it my duty to give it to you now. I have told you that when conspiracy is established in this case, and established to that extent required by the law, that while that conspiracy exists, that each one of the coconspirators is bound by the act and word of the other done or uttered in pursuance of the conspiracy. If the conspiracy was to take the life of Sherman Russell, the words that were uttered by the other conspirator, if that be the state of case, or acts that were done by him, and this defendant remained a part of that conspiracy up to the time of the killing, he is responsible for whatever was done or uttered by the other party, his presence being what I have designated to you as a presence that puts him at the place of the killing actually or constructively in contemplation of law. Words uttered by the other conspirator after the killing was over would not, of course, be binding upon defendant; they would not then have anything to do with the crime; the crime was then already consummated, already completed.

The defendant here asks for special instructions.

I will have to make a rule upon this subject of presenting these instructions. They ought to be presented at least a day before the case is determined. It is very embarrassing after the charge is completed to have to look over these instructions hurriedly. It may become a trap set for the court. Some of these instructions which the court is asked to give will be given, and some will be modified. The defendant asks the court to instruct as follows:

46 "If the jury should find from the evidence in this case that the defendant was not at the place of the killing of Sherman Russell, and that he did not participate in any way in the killing, they should find the defendant not guilty, although they may believe that he had made threats against Sherman Russell."

The court gave this instruction with the following modification:

That is a correct proposition, provided you bear in mind what is meant by being present at the place of the killing, bearing in mind what I have already told you as to constructive and real presence. That instruction as asked for is given in that way, with that qualification.

To the modifying of said instruction defendant excepted.

The defendant asks the court to instruct as follows:

"If the jury find from the evidence that the defendant in connection with Sam Woodard, who did the killing, made threats or laid plans to kill Sherman Russell, and if they further find that the defendant abandoned the intention to kill, and did not, in fact, participate in the killing, then they should find the defendant not guilty."

Which the court gave with the following modifications:

You are to bear in mind in connection with that, how he may become a participant in connection with the other party who fired the shot, how he may be present at the place of the killing—that is, constructively present or really present. That instruction as asked for is modified to that extent.

To which modification defendant excepted.

The defendant asks the court to instruct as follows:

47 "The court charges you that in cases of circumstantial evidence motive on the part of defendant is an important element to be by the jury considered, and where the evidence clearly shows that the defendant had no motive to do the killing, where it is not certain that he did the killing, then they may look to such absence of the motive for the killing in finding their verdict."

Which the court gave with the following modifications:

The court has already told you that the absence or presence of motive is not a necessary requisite to enable you to find the guilt of a party, because it is frequently impossible for the Government or any accusing power to find a motive; it is impossible for the jury to find it; it is so hidden; it is so trifling; it is so insignificant that it is apt to be overlooked from its very hidden character, its very hidden nature; it is something often so unfathomable that it can not be found. Do not understand by the giving of this instruction that the proof showing the existence of motive is any requisite to enable you to find the defendant guilty.

To which modification defendant excepted.

The defendant asks the court to instruct as follows:

"If the jury should find from the evidence in this case that defendant was not present at the time Sam Woodard killed Sherman Russell, but that he went to the place after the killing, they should acquit the defendant."

The court gave this instruction with the following modifications:

You are to bear in mind, again, what is meant by presence actually or constructively. Actual presence means at the place of the killing. Constructive presence means so near to the place as to be able in some

48 way to assist, or abet, or counsel, or advise, or to render some physical assistance, or to exert by such presence an influence upon the mind of the man who did the slaying that he the more quickly did it, acting upon the consciousness or upon the knowledge that there was another at hand willing and ready to assist him in the consummation of that act.

To which modification defendant excepted.

The defendant asks the court to instruct as follows:

"If the jury should find from the evidence in this case that Sam Woodard shot and killed Sherman Russell before the defendant went to the place of the killing, they should find the defendant not guilty, although they may believe that defendant was at place of the killing after the killing and did shoot a pistol."

Which the court gave with the following modifications:

You will bear in mind what is meant in the law, again, by the place of the killing; that means actually at the place or constructively at it. If they entered upon the common mission of taking life of this man, and one of them went to the mouth of one lane, and the other to this

other place 200 or 250 yards from there, and the killing was done, and they went to their respective places for the purpose of intercepting this man if he took either road, and this defendant was at the mouth of that lane with the purpose of assisting Woodard either by rendering actual and physical aid to him, or by exerting this mental influence upon him by the consciousness upon the part of Woodard that he was present at that place for the purpose of aiding, assisting, advising, counselling, or abetting the killing. if he was there wilfully, knowingly, and understandingly, then he would be present at the place of the killing, and he
49 would be a participant in it, if he was connected with it in either of these ways.

To which giving of these instructions as modified defendant excepted.

These propositions are given as modified, and the one numbered 6 is refused, because the principle bearing upon that subject has been correctly given by the court.

The court announces it as a rule here that shall be imperative that unless these requests are presented to the court at least 24 hours before the court charges the jury that they will be rejected upon the ground that they are sent up here when the court has finished the charge, and they are calculated to mislead the jury, the court, and everybody. I will not pay any attention to them in this manner again.

3. Defendant excepts to refusal of the court to give instructions as asked by defendant, Nos. 1, 2, 3, 4, 5, and 6.

4. Defendant excepts to modification of the charges asked by defendant and giving them to the jury in such modified form.

Gentlemen, the case is submitted to you with a conscious belief upon the part of the court that you will do that equal and exact justice that the law and your oaths call upon you to do. Upon the back of this indictment is the form of a verdict. If you find the defendant guilty you will say, "We, the jury, find the defendant Willie Overton guilty as charged in the within indictment," and sign that by one of your number as foreman. If you find him not guilty you put the word "not" in the above form before the word "guilty."

You will retire to consider your verdict.

After due deliberation the jury returned a verdict of guilty.

The defendant then filed his motion for a new trial; which motion is as follows, to wit:

50 United States circuit court, western district of Arkansas.

UNITED STATES }
vs.
WILLIE JOHNSON. }

Now comes the defendant Willie Johnson, and moves the court to set aside the verdict in this case and grant him a new trial, and for causes of motion assigns the following: 1st. Because the court erred in admitting evidence of Lewis Lundy as to the cause of the separation of defendant and his wife. 2d. Because the court erred in his charge to the jury, as follows:

1st. "Now, a word further as to what is meant by constructive presence. I have already told you that the test is that if a man is so near to the place, no matter how far in feet or yards he may be away, if, from the circum-

stances, from the character of the act done and the way it is done, he is so near to where it is actually done as to be able to render assistance or to contribute to the production of that act, and he is then actually doing so, or is there ready to do so wilfully and intentionally, present in pursuance of a previous agreement, and he confederated to render aid and assistance, he is then present in the law. As an illustration, take the case decided in Nevada, where the man was 30 odd miles from the place where a stage was robbed; he built a fire on the top of the mountain to signal to his confederates the approach of the stage, they being down in the valley waiting to rob it. He was arrested as a principal in the crime, though as a matter of fact at the time of the robbery he was 32 miles or 30 odd miles away, but the law said he was present, because the test of the law
51 as to what is meant by presence is fully satisfied, because the proof showed that he was able to render assistance that looked toward the consummation of that crime; towards the completion of it, towards the execution of it. Another case: A man goes to a store kept in the country and decoys away the clerk, who slept at that store; decoys him to go to a dance some miles distant from the store and detained him at the dance while his confederates robbed the store."

2nd. "If the presence of the defendant in this case at the place where the proof shows he was, was by previous agreement or concert with Sam Woodard, and it was the purpose on his part to assist, aid, or abet the killing of Sherman Russell, and he was there wilfully and knowingly for the purpose, if it should be necessary, of assisting Sam Woodard in killing Sherman Russell, and the knowledge on the part of Woodard of the presence of defendant at the place where he was for the purpose of assisting him in killing Sherman Russell emboldened his purpose and encouraged his heart, or afforded him hope or confidence in his enterprise, or spurred on his mind to do the act, or nerved and strengthened his arm to fire the pistol shot, then the defendant would be present aiding and abetting the killing. He may not have done any actual physical act, but if his relation to the act was of the character that I have just named, that relation was a criminal relation upon his part, it was a violation that sprung out of a preconceived design between Woodard and defendant to take the life of Sherman Russell, and if such a presence for the purpose of aiding, or assisting, or abetting, should it become necessary, exerted a mental influence upon Woodard so that he the more readily or quickly executed the act, the defendant would then be present at the crime,
52 whether he was actually and really at the place, or whether he was so near to the place as by the means I have described to exert an influence of that character upon the mind of Sam Woodard, he would then be present at the crime, and he would be an actual participant in it. If at the time Sam Woodard shot at and killed Sherman Russell the defendant was constructively present at the place of the killing, and he was at such place with the intent to wilfully and knowingly assist Sam Woodard in killing Sherman Russell should it become necessary to consummate the deadly purpose, but that such aid was not necessary, as Woodard did the killing without such help, then such constructive presence with such purpose would be a legal presence and would make the defendant a participant in the killing."

3rd. "If he is present actually or constructively at the time of the commission of the crime and is so situated with reference to it, and while so situated wilfully and intentionally, knowing the purpose of the man who strikes the deadly blow or fires the fatal ball, and while so situated he there wilfully and intentionally aids, either by doing some physical act or by being present at that place by reason of a previous agreement, and the very fact of that presence exerts an influence upon the mind of the party who fires the fatal shot, showing that he the more readily or quickly does the act, then he is present at the place and is actually an aider and abettor, and is a principal in the crime."

4th. "Now, the fact that there is a joint participation in the crime in any one of these ways implies that there is an agreement to engage in it,
and that agreement may be entered into contemporaneous with the
53 doing of the act. If that exists, that is what is called a conspiracy
in the law, an agreement to do a wrongful act, an agreement to take a human life. That is called a conspiracy and *and* in this kind of a case it would be called a conspiracy to commit the crime of murder. That underlies every case where there is participation in the crime. When that is established it necessarily shows a will to participate in it, because if two men agree to murder a third man, that shows a will to do the deed, and if that act is consummated while the parties remain a part of that conspiracy, it is their act if they are connected with it in any one of the ways I have named here—that is, if one actually does it with his own hand and the other is wilfully or knowingly, in pursuance of a previous agreement, present at the place, and in some way aiding or abetting or assisting in its commission, or is there for the purpose of assisting. Now, it is necessary to find that that state of case exists. You can not find conspiracy by any written document that you may get hold of, because men do not go into it in that formal way. A conspiracy may be entered upon either expressly or tacitly, the law says. Two men, in other words, by so many words expressly may agree to commit murder. In this case if you find that the evidence sustains the position or theory asserted by the Government, that Sam Woodard and this defendant entered into an agreement, at the church or elsewhere, to take the life of Sherman Russell, that would be entering into it by so many words. It is not necessary that it should be proven to have been entered into by words, however. If one man knows the purpose of another and he knows that other intends to commit crime, for instance the crime of murder, and he joins with him with the intent
of aiding him and keeps with him until the murder is committed
54 with such intent, by the fact of his in some way aiding, advising,
assisting, or abetting the crime, being actually or constructively present at it, he is then a part of the conspiracy, just as much as though he had entered into it in writing or in so many formal words."

5th. "In a country where there is a recklessness of human life, where men are careless of human life, somtimes their purpose is heard by others, sometimes they enter into that purpose recklessly, sometimes they act as though it was a spirit of bravado that prompted them, and when that is the case you are to take their declarations for what they are worth, going to show a purpose of that kind.

"If they are telling the truth, if they are purposely uttered, if they are wilfully uttered, you may take them into account as evidencing an

agreement to do an act of that kind; but as to whether it was intended or not, you have a right to go to the very result that transpired, to the very fact of killing, because that is the evidence of whether the threat is intended or not. If threats were made jointly by this defendant and Sam Woodard that they were to kill Sherman Russell, you are to see whether those threats were deliberate, whether they were intentional, whether they were premeditated, and, in doing that, I say you may go to the result; you may see whether they were followed up by an act indicated by the character of the threats. You may look at it in that way. You, in other words, can only find the existence of a conspiracy, as a rule, by circumstances evidencing that conspiracy. You are to take the association of the parties together there, their relation to each other, their conduct at the time of the doing of the act, their proximity to each other at the time, the declarations uttered by them, the conduct of this defendant, if it was unnatural and unreasonable and not consistent with the theory of
55 his innocence after the killing, his not even going to the body, or anything of that kind. That is a circumstance to be taken into account. If it was not unnatural or unreasonable under the circumstances it is a circumstance that would not amount to anything."

6th. "If you find there was evidence establishing the conspiracy between Sam Woodard and this defendant that goes to show a premeditated purpose to kill, it goes to show the doing of a wilfull act upon the part of defendant as well as upon the part of Sam Woodard that resulted in the death of Sherman Russell. You are to look at all these facts and circumstances to see whether or not these parties entered into a purpose of this kind. Now, if they started out upon a mission of that character, in pursuance of an agreement of that character, and one took his position at one point that he might come across or intercept the man that was sought to be killed, and another at another point 200 or 250 yards distant from where the killing occurred that he might intercept Sherman Russell there and kill him there if he went that way, then you would have evidence going to show a preconcerted design to take the life of Russell; you would have a state of case that, under the law, would show the presence of the defendant at the place of the killing and so near that he would be constructively present."

7th. "If in pursuance of a previous agreement to take the life of the man killed he was at the place and while so situated he was actually and really doing some physical act that might aid or assist or abet the man Woodard in the killing of Russell, he would be present at the place of the crime and he would be contributing to the result by the doing of a physical act. If they had agreed to do this act beforehand, and they had started upon this mission and *a and* had taken their stations desig-
55½ nated by the witnesses at these respective places, and if at the time that Woodard killed Russell the consciousness upon his part that there was a man who was in reach and ready and willing to assist him in the perpetration of the act if necessary, or ready to do it himself if the opportunity offered—if that consciousness caused him the sooner to pull the trigger, caused him the sooner to shoot, caused him to kill sooner than he would have done if there had been an absence from the place of defendant who was acting in harmony with him towards the consummation of of this act, then defendant would be present at the place of the crime, he

would be aiding in its commission by the rendition of the acts done by him and that kind of assistance that operated upon the mind of the man who did the act with his own hand."

8th. "The defendant goes upon the stand before you and he makes his statement; tells you his story. Above all things, in a case of this kind, you are to see whether that statement is corroborated substantially and reliably by other reliable or proven facts; if so, it is strengthened to the extent of its corroboration; if it is not strengthened in that way, you are to weigh it by its own inherent truthfulness, its own inherent proving power, the proving power that may belong to it."

3rd. Because the court erred in refusing to give instructions to the jury as asked by the defendant.

4th. Because the court erred in refusing to give instructions asked by the defendant and in modifying them and giving them as modified.

5th. Because the court erred in remarking in the presence of the jury that the instructions asked by the defendant was "a trap laid to catch the court."

56 6th. Because the verdict is contrary to the law.

7th. Because the verdict is contrary to the evidence.

And for other good and sufficient reasons.

WILLIE JOHNSON,
By FREDERICK & FREDERICK,
His Attorneys.

Which motion was by the court overruled, and in overruling the court made the following remarks:

57 UNITED STATES
vs.
WILLIE JOHNSON ALIAS WILLIE OVERTON. } Murder.

Remarks of court on motion for a new trial.

The first cause set up by the defendant as a ground for a new trial is:

"Because the court erred in admitting the evidence of Lewis Lunda as to cause of the separation of defendant and his wife."

The evidence as shown by the record is as follows:

"Q. Were Willie Johnson and his wife living together at that time?—A. No, sir.

"Q. At the time you went there were they?—A. No, sir.

"Q. Did you ever hear from Willie Johnson what was the cause of the separation?

"Mr. C. J. FREDERICK (of counsel for defendant). I object to that; whether they were separated or not has nothing to do with this case.

"The COURT. I suppose it is asked to show a motive for the killing.

"Mr. FREDERICK (of counsel for defendant). I object to it on that ground. It is collateral and does not throw any light on this transaction.

"The COURT. I think it is entirely competent.

"Mr. C. J. FREDERICK (of counsel for defendant). We save an

58 exception.

"The DISTRICT ATTORNEY. Did you hear Willie Johnson say anything about how they happened to separate?

"A. Yes, sir; I heard them say that—I heard him say that he caught Hillard Russell——

"Mr. C. J. FREDERICK (o fcounsel for defendant). My objection goes to this answer—what he is stating now.

"The DISTRICT ATTORNEY (to the witness). How is that?

"A. That he caught Hillard Russell in bed with his wife, and Hillard came out of the house and shot at him.

"Q. Who was Hillard Russell? What was the relation between him and Sherman?

"A. They were brothers.

"Mr. C. J. FREDERICK (of counsel for defendant). That is not competent. The witness is telling about a difficulty between the brother of the deceased and the defendant, not a difficulty between the deceased and the defendant.

"The DISTRICT ATTORNEY. I submit the question to the court. I was under the impression it was Sherman Russell, the man who was killed, that he had the difficulty with.

"The COURT. That is, perhaps, a little too remote. If you are able to show that there was any feeling against the entire family you would have a right to do that.

"Mr. C. J. FREDERICK (of counsel for defendant). The court rules that out.

"The COURT. Yes.

"Mr. C. J. FREDERICK (of counsel for defendant.) That part of the testimony of this witness relating to a difficulty between Hillard Russell and the defendant is *is* not before the jury.

59 "The COURT. No; it is excluded."

This evidence in regard to the reason of the separation of Willie Johnson and his wife, as shown by the records, from pages 80 to 82 of the original record, was excluded by the court as soon as it was developed by the examination of the witness that it was the conduct of the brother of the deceased, Hillard Russell, that caused the separation, and not the conduct of Sherman Russell. The court held at this point that such a fact was too remote, and that it was therefore inadmissible, and the whole of the testimony relating thereto was excluded, as shown by the record. The court could not, therefore, have erred in admitting the evidence.

The second cause for a new trial is based upon certain paragraphs, or extracts, from the charge of the court relating to the doctrine of the law as to a party's being present aiding and abetting another in the commission of a crime—in this case as to the defendant being present, aiding, assisting, and abetting Sam Woodard to do the killing. Also, as to what is meant as to being present actually, constructively, or legally. Also, as to how the defendant might render aid or assistance to Sam Woodard while he with his own hand shot the deceased. Also, as to the rules of the law defining what a conspiracy is; how parties may join in and become members thereof; how such conspiracy may be proven, and how far each member of the conspiracy is bound by the acts and declarations of the other members of the same, done or said in furtherance of the conspiracy. The objectionable matter set out in the motion for a new trial relates also to

60 that part of the charge of the court giving to the jury the rules of law to aid them in weighing the evidence of the respective witnesses in the case, including the defendant as a witness.

The parts of the charge set out in the motion for a new trial are mere fragments of the whole charge bearing on the subjects mentioned in such fragments, as are set out in the motion. It is very difficult to judge correctly as to whether a charge is law or not from mere excerpts of it. Its continuity is broken, and often its sense is destroyed. But even in the propositions as set out in the motion for a new trial in this case we have beyond any question a correct statement of the law bearing on the propositions as set out. The doctrine of the law as to guilt of crime from aiding and abetting the same, the rule as to real and constructive presence, the law of conspiracy and how it may be proven, are all correctly stated in the charge embracing these subjects, and the law as stated in such charge is sustained by the authority of every case on the subject which has ever been before a respectable court. These principles were specially prominent in the great cases alluded to in the charge, to wit: The United States v. Aaron Burr; The Commonwealth v. Knapp, and The State *v.* Spies, cases coming up at intervals of 87 years of the country's judicial history. The principles asserted in each are in entire harmony with those asserted in the others, as well as with those laid down in this case. I shall take occasion to make a part of the record in this case all of the charge embrac- the principles above named, so that the appellate court may see the whole of it as presented. It seems to me, if it be the office of the judge to give to the jury intellegent judicial instructions for their guidance,
61 that the charge of the court on the points objected to is the law. If the judge can not take part in the trial, but his functions are no more than a mere moderator, then, perhaps, in giving the charge he was out of line with his duty and exceeded his authority. But that the charge is in every part of it the law there can be no question. And it seems that the law of the case is what the jury were entitled to. It must be observed that none of the matter of the charge relating to actual or constructive presence, to aiding or abetting the crime, to conspiracy and how it may be proven, how far the acts and words of one conspirator bind the other, was excepted to at the time of the trial. This must be done, and it must be done in the presence of the jury. Chief Justice Wait', in U. S. v. Carey, 110 U. S., 51, said:

"The rule is well established and of long standing, that an exception to be of any avail must be taken at the trial, and this must appear affirmatively in the record by bill of exceptions duly allowed or otherwise."

If these exceptions were not taken at the time of the trial they can not be set out in a bill of exceptions as having been taken. In the charge complained of the court, in order to show the jury what constructive presence meant, referred to the case of State v. Hamilton (13th Nevada, 386), which is one of the leading cases on the subject, and also to the case of Breese v. State (12 St. O. 146). The purpose of the court should be to teach the jury the law of the case. This should be done in an intelligent and effective way. This is the principal office of a court in a trial. Can not this be done by illustration? This method of imparting instruction is often said by wise instructors to be the easiest and most success-
62 ful way of imparting knowlege. If the court can do this what better illustrations can be used than well-adjudged cases? The authority of adjudged cases as precedents is of the very highest character with all courts. It is complained that the part of the charge which gave

the rules of law proper to be given to aid the jury in weighing the evidence was error. Can there be any possible error in this? The whole charge contains no comment on the evidence, which the court could have made if it left to the jury the ultimate right to pass upon its weight. It left this duty wholly to the jury. They were to weigh it in an untrammeled way, without any advice as to its proving power from the court, but this generally is not objected to, but only that the court should not have given these rules of law as applicable to the testimony of the defendant. Why not? Is he not like any other witness, and subject to the same rules of law applicable to his evidence? If not, why not? Does the fact that he is charged with a crime surround him with such an odor of truth-telling sanctity that the jury are not to apply to his evidence the usual rules of the law to enable them to justly and properly weigh it? Is he free from motives of self-interest, while ordinary witnesses are subject to them? If so, all witnesses should be criminals, or charged with crime, to qualify them to tell the truth. The absurdity of this proposition refutes it. Judge Thompson, in an article entitled Cautionary Instructions in Criminal Cases, 10th Crim. Law Mag., par. 30, pp. 193, 194, when speaking of instructions given by courts to juries relating to the testimony of a defendant witness, says:

"They unite in conveying to the jury the following admonitions:

First. That under the law the accused is a competent witness in his
63 own behalf, and that the jury are bound to consider his testimony.

Second. That in determining what weight to give to it it is proper for them to take into consideration his interest in the result of the trial. Third. That they may give to his testimony such weight as under all the circumstances they think it entitled to. He may caution them they are not bound to believe the testimony of the accused, etc., etc." When speaking generally of the right and the duty of the court to give the jury certain rules to enable them to weigh evidence, in his great work on trials, at sec. 2418, this eminent law writer says:

"The judge may properly give to the jury certain general advice touching the credibility of witnesses, so that he is careful not to trench upon their peculiar province in determining the extent to which witnesses are to be believed. It is needless to suggest as a premise that, in civil and criminal actions alike, the credibility of witnesses is exclusively a question for the jury. But the judge may properly tell them in a criminal case that it will be their duty to reconcile any conflict which they may find in the testimony so as to give credit to the whole of it, if they can; but if they can not, that they may credit the whole, or any part of the testimony of any witness who has testified in the case, accordingly as the testimony of such witness, or his manner of giving it, shall impress their minds as being worthy or unworthy of belief. He may likewise tell them that they may consider the age, intelligence, interest in the case, or apparent prejudice, if any, and all other circumstances in evidence before them in determining the credibility of the witnesses."

64 Mr. Wharton, in his Evidence in Criminal Cases, section 429, says:

"A party, it may be said generally, when he becomes a witness is subject to the usual duties, liabilities, and limitations of witnesses. * * * As to his credibility the usual distinctions apply."

The remarks of the court do not constitute comments on the weight of evidence. Such comments may be made under the rules of practice in courts of the United States. United States courts may give their opinion of the evidence, and of its proving power to the jury. Transportation Line v. Holt, 95 U. S., 297; Mitchell v. Harmony, 13 How., 131; Ins. Co. v. Rodell, 95 U. S., 238. The court in this case did not go as far as it might have gone, for it did not give its opinion of the weight of the evidence.

The third ground for a new trial is as follows:

"Because the court erred in refusing to give the instructions to the jury asked for by the defendant, which are as follows."

The fourth ground is as follows: "Because the court erred in refusing to give the instructions asked for by the defendant, and in modifying them and giving them as modified, which instructions given as modified are as follows."

These two grounds may be considered together. All of the declarations asked were given with modification, except the one numbered "6." These instructions may have been good abstract law, and were; but they are none the less good concrete law, when the modification is added to them. If given without being modified, as they were asked, the
65 jury were liable to be misled as to the meaning of the phrase "present at the place of the killing." The doctrine of constructive presence is one so firmly established in the law as that there can be no question about it. And if it be the purpose of a charge of a court to give the jury the law of a case, it certainly is entirely proper that their minds should be drawn to the difference between constructive and actual presence, and that there may be presence in the law without the party being actually, physically present at the place of the crime. There could be no error, in my opinion, by the modification of any of these instructions.

The sixth declaration of law asked for by the defendant is as follows:

"If defendant was at a place for the purpose of aiding Sam Woodard in the killing of deceased, and Woodard knew of such presence at that place of the defendant, and that such presence operated on the mind of Sam Woodard to cause him to more quickly or more readily kill deceased, yet unless they find that defendant had weapons or the means to enable him to give Woodard such assistance they should acquit the defendant."

This is clearly not the law, as the defendant could have aided Sam Woodard in doing the killing without being armed with a deadly weapon. He could have done so by giving information of the approach of the victim; by watching to prevent interruption or discovery; and the consciousness of his presence for this purpose on the part of Woodard may have emboldened him to do the deed. It is a part of the judicial history of this country that in the great case of The Commenwealth v. Knapp (10
66 Pick., 477), Knapp was only constructively present. He was in a lot, quite a long distance from the scence of the murder, which took place in the upper story of a house, and he was unarmed, but he was on watch. In my judgment there was clearly no error in refusing this instruction.

The fifth cause for a new trial is because the court remarked in the presence of the jury that the instructions asked for by the defendant was a trap laid to catch the court. Here is what the court said in relation to the matter:

"I will have to make a rule upon this subject of presenting these instructions. They ought to be presented at least a day before the case is determined. It is very embarrassing after the charge is completed to have to look over these instructions hurriedly. It may become a trap set for the court. Some of these instructions which the court is asked to give will be given, and some will be modified."

This, under the circumstances, was not an improper remark. It could not have had any weight whatever with the jury. The court had a right to make the remark. It was not intended to convey the idea that counsel had any intention of trapping the court, but the effect of such action may produce such a result, as the court could have no time under the circumstances to properly examine the law of the propositions submitted.

The sixth cause. "Because the verdict is contrary to the law."

I do not think the verdict is contrary to the law, but, on the contrary, it is sustained by the law applicable to this case.

The seventh cause is: "Because the verdict is contrary to the evidence."

67 This is the last cause set up in the motion. I am not prepared to assent to its being correct. There are seven witnesses introduced upon the part of the Government who give facts and circumstances which are intensely accusative. They show a conspiracy to commit the crime; they show threats to commit it, made both by Woodard and the defendant, and they show such participation in it by the defendant as to make him a guilty agent in its commission. True, some facts and circumstances are given by some of defendant's witnesses which tend to contradict the facts given by the witnesses for the Government, but very many of the facts stated by the defendant witnesses may be true, and yet they are not contradictory of the evidence of the witnesses for the Government. This question of the conflict or contradiction of evidence is one for the jury, and unless they have committed manifest error I am not inclined to interfere with their verdict on the ground of its being against the evidence. I can not say in the light of this testimony that they have committed manifest error. If the Government evidence is true it is ample to sustain this verdict. Its credibility was for the jury. They took it, under proper and correct propositions of the law applicable to it, and I can not say they erred in weighing its proving power, or in applying the law to it. The motion for a new trial will be overruled.

To which ruling of the court the defendant excepted.

To all of the foregoing rulings of the court in the admitting of the evidence as excepted, and in his instructions to the jury as above specified the defendant excepted and tenders this his bill of exceptions and prays that it be signed and made a part of the record in the, case which is accordingly done.

I. C. PARKER,
U. S. Dist. Judge, Holding Circuit Court.

69 *Assignment of errors.*

United States circuit court, western district of Arkansas.

UNITED STATES
vs. } Murder.
WILLIE JOHNSON.

The defendant, Willie Johnson, files this his assignment of errors committed on the trial of said cause:

1st. It was error of the court to charge the jury as follows:

"Now, a word further as to what is meant by this idea of constructive presence. I have already told you that the test is if a man is so near to the place, no matter how far in feet or yards he may be away, if from the circumstances and from the character of the act done and the way it is done he is so near *ti* where it is actually done as to be able to render assistance or to contribute to the production of that act, and he is there actually to do so, or is there ready to do so wilfully, and intentionally present in pursuance of a previous agreement, and he confederated to render aid and assistance, he is then present in the law. As an illustration take the case decided in Nevada, where the man was 30 odd miles away from the place where a stage was robbed; he built a fire on the top of a mountain to signal to his confederates the approach of the stage, they being down in the valley waiting to rob it. He was arrested as a principal in that crime, although as a matter of fact at the time of the robbery he was 32 miles away, or 30 odd miles away, but the law said he was present, because the test of the law as to what is meant by *by* presence is fully satisfied, because the proof showed that he was able to render assistance that looked toward the completion of it—towards the execution of it.

70 "Another case: If a man goes to a store kept in the country and decoys away the clerk who slept in the store, decoys him to go to a dance some miles distant from the store, and detained him at the dance while his confederate robbed the store."

2nd. It was error to charge the jury as follows:

"If the presence of the defendant in this case at the place where the proof shows he was, was by previous agreement or concert with Sam Woodard, and it was the purpose on his part to assist, aid, or abet the killing of Sherman Russell, and he was there wilfully and knowingly for the purpose, if it should be necessary, of assisting Sam Woodard in killing Sherman Russell, and the knowledge on the part of Woodard of the presence of the defendant at the place where he was for the purpose of assisting him in the killing of Sherman Russell emboldened his purpose and encouraged his heart, or afforded him hope or confidence in his enterprise, or spurred on his mind to do the act, or nerved and strengthened his arm to fire the pistol shot, then the defendant would be present aiding and abetting the killing. He may not have done any actual physical act, but if his relation to the act was of the character that I have just named, the relation was a criminal relation upon his part; it was a relation that sprung out of a preconceived design between Woodard and defendant to take the life of Sherman Russell, and if such a presence for the purpose of aiding or assisting or abetting, should it become necessary, exerted a

mental influence upon Woodard, so that he the more readily or quickly executed the act, the defendant would then be present at the crime whether he was really and actually at the place or whether he was so near
71 to the place, as by the means I have described to exert an influence of that character upon the mind of Sam Woodard, he would then be present at the crime and he would be an actual participant in it. If at the time Sam Woodard shot and killed Sherman Russell the defendant was constructively present at the place of the killing, and he was at such place with the intent to knowingly and wilfully assist Sam Woodard in killing Russell, should it become necessary to consummate the deadly purpose, but that such aid was not necessary, as Woodard did the killing without such help, then such constructive presence with such purpose would be a legal presence and would make the defendant a participant in the killing."

3rd. It was error to charge the jury as follows:

"If he is present actually or constructively at the time of the commission of the crime, and is so situated with reference to it, and while so situated wilfully and intentionally knowing the purpose of the man who strikes the deadly blow or fires the fatal ball, and while so situated he then wilfully and intentionally aids either by doing some physical act or by being present at the place by reason of a previous agreement, and the very fact of that presence exerts an influence upon the mind of the party who fires the fatal shot, showing that he more readily or quickly does the act, then he is present at the place and is actually an aider and abettor and is a principal in the crime."

4th. It was error to charge the jury as follows:

"Now, the fact that there is a joint participation in a crime in any one of these ways implies that there is an agreement to engage in it, and that agreement may be entered into cotemporaneous with the doing of the act. If that exists, that is what is called a conspiracy in the law, an
72 agreement to do a wrongful act, an agreement to take a human life. That is called a conspiracy, and in this kind of a case it would be called a conspiracy to commit the crime of murder. That underlies any case where there is participation in a crime. When that is established it necessarily shows a will to participate in it, because if two men agree to murder a third man, that shows a will to do the deed; and if that is consummated while the parties remain a part of that conspiracy, it is this act if they are connected with it in any one of the ways I have named here—that is, if one actually does it with his own hand and the other is wilfully and knowingly, in pursuance of a previous agreement, present at the place and in some way aiding or abetting or assisting in its consummation, or is there for the purpose of assisting. Now, it is necessary to find that that state of case exists. You can not find conspiracy by any written document that you may get hold of, because men do not go into it in that formal way; a conspiracy may be entered upon either tacitly or expressly, the law says. Two men, in other words, by so many words may expressly agree to commit murder. In this case, if you find that the evidence sustains the position or theory asserted by the Government, that Sam Woodard and this defendant entered into an agreement at the church or elsewhere to take the life of Sherman, that would be entering into it by so many words. It is not necessary that it should be proven to have

been entered into by words, however. If one man knows the purpose of another, and he, knowing that other intends to commit crime—for instance, the crime of murder—and he joins with him with the intent of aiding him and keeps with him until the murder is committed with such
73 intent, by the fact of his in some way aiding, assisting, or abetting the crime, being actually or constructively present at it, he is then a part of the conspiracy just as much as though he had entered into it in writing or in so many words."

5th. It was error to charge the jury as follows:

"In a country where there is a recklessness of human life, where men are careless of human life, sometimes their purpose is heard by others; sometimes they enter into that purpose recklessly; sometimes they act as though it was a spirit of bravado that prompted them, and when that is the case you are to take their declarations for what they are worth, going to show a purpose of that kind. If they are telling the truth, if they are purposely uttered, you may take them into account as evidencing an agreement to do an act of that kind. But as to whether it was intended or not you have a right to go to the very result that transpired, to the very fact of the killing, because that is an evidence of whether the threat is intended or not. If threats were made jointly by this defendant and Sam Woodard that they were to kill Sherman Russell, you are to see whether those threats were deliberate, whether they were intended, whether they were premeditated, and in doing that, I say you may go to the very result; you may see whether they were followed up by an act indicated by the character of the threats. You may look at it in that way. You, in other words, can only find the existence of a conspiracy, as a rule, by circumstances evidencing that conspiracy. You are to take the association of the parties together there, their relation to each other, their conduct at the time of the doing of the act, their proximity to each other at the time, the declarations uttered by them. The conduct of this defend-
74 ant, if it was unnatural and unreasonable and not consistent with the theory of his innocence after the killing, his not even going near the body or anything of that kind, that is a circumstance to be taken into account; if it was not unnatural or unreasonable under the circumstances, it is a circumstance that would not amount to anything."

6th. It was error to charge the jury as follows:

"If you find there was evidence establishing this conspiracy between Sam Woodard and this defendant that goes to show a premeditated purpose to kill, it goes to show the doing of a wrongful act upon the part of the defendant as well as upon the part of Sam Woodard that resulted in the death of Sherman Russell. You are to look at all these facts and circumstances to see whether or not these parties entered into a purpose of this kind. Now, if they started out upon a mission of that character in pursuance of an agreement of that character, and one took his position at one point that he might come across or intercept the man that was sought to be killed, and another at another point 200 or 250 yards distant from where the killing occurred that he might intercept Sherman Russell there and kill him, then if he went that way then you would have evidence going to show a preconcerted design to take the life of Russell, you would have a state of case that under the law would show the presence of the defendant at the place of the killing and so near as that he would be constructively present."

7th. It was error to charge the jury as follows:

"If in pursuance of a previous agreement to take the life of the man killed he was at the place, and while so situated he was actually and really doing some physical act that might aid or assist or abet the man Woodard in the
75 killing of Russell, he would be present at the place of the crime and he would be contributing to the result by the doing of a physical act. If they had agreed to do this act beforehand, and they had started upon this mission and had taken their stations designated by the witnesses at these respective places, and if at the time that Woodard killed Russell the consciousness upon his part that there was a man who was in reach and ready and willing to assist him in perpetration of the act, if necessary, or ready to do it himself if the opportunity offered—if that consciousness caused him the sooner to pull the trigger, caused him the sooner to shoot, caused him sooner to kill, sooner than he would have done it if there had been an absence from the place of defendant, who was acting in harmony with him towards the consummation of this act, the defendant would be present at the place of the crime. He would be aiding in its commission by the rendition of the acts done by him and that kind of assistance that operated upon the mind of the man who did the act with his own hand."

8th. It was error to charge the jury as follows:

"The defendant goes upon the stand before you and he makes his statement; tells his story. Above all things, in a case of this kind you are to see whether that statement is corroborated substantially and reliably by the proven facts; if so, it is strengthened to the extent of its corroboration. If it is not strengthened in that way you are to weigh it by its own inherent truthfulness, its own inherent proving power that may belong to it."

9th. It was error to charge the jury as follows:

"If the jury should find from the evidence in this case that the defendant was not at the place of the killing of Sherman Russel, and that
76 he did not participate in any way in the killing, they should find the defendant not guilty, although they may believe that he made threats against Sherman Russell. That is a correct proposition, provided you bear in mind what is meant by being present at the place of the killing, bearing in mind what I have already told you as to constructive and real presence. That instruction as asked is given in that way with that qualification."

10th. It was error to charge the jury as follows:

"If the jury found from the evidence that the defendant in connection with Sam Woodard, who did the killing, made threats or laid plans to kill Sherman Russell, and if they further find that the defendant abandoned the intention to kill and did not in fact participate in the killing, they should find the defendant not guilty. You are to bear in mind in connection with that how he may become a participant in connection with the other party who fired the shot, how he may be present at the place of the killing—that is, constructively present or really present. That instruction as asked for is modified to that extent."

11th. It was error to give the following charge:

"The court charges you that in cases of circumstantial evidence motive on the part of defendant is an important element to be by the jury considered, and where the evidence clearly shows that the defendant had no motive to do the killing when it is not certain that he did the killing, then

they may look to such absence of motive for the killing in finding their verdict. The court has already told you that the absence or presence of motive is not a necessary requisite to enable you to find the guilt of a party, because it is frequently impossible for the Government or accusing
77 power to find a motive; it is impossible for the jury to find it; it is so hidden, it is so trifling, it is so insignificant that it is apt to be overlooked from its very hidden character, its very hidden nature; it is something often that is so unfathomable that it can not be found. Do not understand that by the giving of this instruction that proof showing the existence of motive is any requisite to enable you to find the defendant guilty."

12th. It was error to charge the jury as follows:

"If the jury should find from the evidence in this case that defendant was not present at the time Sam Woodard killed Sherman Russell, but that he went to the place of the killing, they should acquit the defendant. You are to bear in mind again what is meant by presence actually or constructively. Actual presence means at the place of the killing; constructive presence means so near to the place as to be able in some way to assist or abet, or counsel, or advise, or to render some physical assistance, or to exert by such presence an influence upon the mind of the man who did the slaying that he the more quickly did it, acting upon the consciousness or upon the knowledge that there was another at hand willing and ready to assist him in the consummation of that act."

13th. It was error to charge the jury as follows:

"If the jury should find from the evidence in this case that Sam Woodard shot and killed Sherman Russell before the defendant went to the place of the killing, they should find defendant not guilty, although they may believe that defendant was at the place of the killing after the killing and did shoot a pistol. You will bear in mind what is meant in the law again by the place of the killing; that means actually at the place or so constructively at it. If they entered upon the common mission
78 of taking the life of the man, and one of them went to the mouth of one lane and the other to this other place, 200 or 250 yards from there, and the killing was done, and they went to their respective places for the purpose of intercepting this man if he took either road, and this defendant was at the mouth of that lane with the purpose of assisting Woodard, either by rendering actual and physical aid to him or by exerting this mental influence upon him by the consciousness upon the part of Woodard that he was present at that place for the purpose of aiding, assisting, advising, counselling, or abetting the killing, if he was there wilfully, knowingly, and understandingly, then he would be present at the place of the killing and he would be a participant in it if he was connected with it in either of these ways."

Whereupon, the above-stated errors considered, the said defendant prays that the judgment and sentence against him be reversed and a new trial be granted him.

WILLIE JOHNSON.
By C. J. FREDERICK,
His Attorney.

(Endorsed on back:) Filed in open court June 20, 1894. S. Wheeler, clerk.

79 United States circuit court, western district of Arkansas.

UNITED STATES
vs.
WILLIE JOHNSON. } Murder.

To the clerk of the circuit court of the United States for the western district of Arkansas:

Your petitioner, Willie Johnson, represents that at the February term, 1894, of said court, he was convicted on an indictment charging him with the crime of murder, and that the said court has pronounced judgment and sentence of death upon this petitioner of the jury convicting him as aforesaid; your petitioner alleges that in the record and proceedings in the trial in said cause there is great and manifest error to the prejudice and great damage of your petitioner. He therefore prays that a writ of error from the Supreme Court of the United States be issued by you under the seal of said circuit court in said cause, removing said cause and the record therein to the said Supreme Court in order that the same may be there examined and, if error be found, that the judgment and sentence against him therein may be reversed.

WILLIE JOHNSON,
By C. J. FREDERICK,
His Attorney.

(Endorsed on back:) Filed in open court, June 20, 1894. S. Wheeler, clerk.

80 United States circuit court, western district of Arkansas.

UNITED STATES
vs.
WILLIE JOHNSON. } Murder.

I, Willie Johnson, the defendant in the above-stated cause, do solemnly swear that I am not possessed of sufficient means and am not worth $10.00 above my wearing apparel, and am unable to procure the same so as to prosecute the appeal taken in said cause in the Supreme Court of the United States.

I therefore pray that it be prosecuted in forma pauperis.

WILLIE JOHNSON.

Sworn to and subscribed before me this the 15th day of June, 1894.

STEPHEN WHEELER, *Clk.*,
By J. M. BAXTER, *D. C.*

(Endorsed on back:) Filed in open court, June 20, 1894. S. Wheeler, clerk.

81 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the U. S. for the western dist. of Ark., greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some

of you, between the United States, plaintiff, and Willie Johnson alias Willie Overton, defendant, a manifest error hath happened to the great damage of the said Willie Johnson alias Willie Overton, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 60 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 21 day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[SEAL.] STEPHEN WHEELER,
Clerk of the Circuit Court of the United States.

Allowed by

Justice of the Supreme Court of the United States.

82 UNITED STATES OF AMERICA, *ss:*

To Jas. F. Read, U. S. district attorney for the western district of Arkansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within 60 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the circuit court of the U. S. for the western district of Arkansas, wherein Willie Johnson alias Willie Overton is plaintiff in error, and the United States is defendant in error, to show cause, if any there be, why the rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac C. Parker, judge of the district court of the United States, this 26 day of June, in the year of our Lord one thousand eight hundred and ninety-four.

ISAAC C. PARKER,
U. S. Dist. Judge, Holding Circuit Court.

I, Jas. F. Read, U. S. dist. att'y for the western dist. of Ark., hereby waive service of the within citation.

June 26, '94.

JAS. F. READ,
U. S. Dist. Atty.

83 UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of the circuit court of the United States for the western district of Arkansas, in the eighth circuit, hereby certify that

157-320

157-320

Office Supreme Court, U. S.
FILED
DEC 5 1894
JAMES H. McKENNEY,
CLERK.

CASE No. 15624.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIE JOHNSON, ALIAS OVERTON, plaintiff in error,
v.
THE UNITED STATES.
No. 740.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR DEFENDANT IN ERROR.

CASE No. 15624.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIE JOHNSON, ALIAS OVERTON, plaintiff in error, v. THE UNITED STATES. } No. 740.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR DEFENDANT IN ERROR.

The plaintiff in error was indicted for the murder on July 12, 1893, of Sherman Russell, a negro and not an Indian, at the Creek Nation in the Indian Territory. One Sam Woodard, who was the person who actually fired the fatal shot, was jointly indicted with him, but not tried. Plaintiff in error was tried before Judge Parker and a jury, and convicted on March 7, 1894.

The main question in this case is whether Overton was a principal or only an accessory before the fact. He was

indicted and convicted as a principal. There seems to be no Federal statute against accessories before the fact in murders upon the land.

STATEMENT OF FACTS.

Overton and his witnesses all testified that he knew nothing of the murder and had nothing to do with the murderer. The case is, therefore, one of absolute conflict of testimony, there being a large number of witnesses on both sides. One of defendant's witnesses gave testimony tending to show that the case against him was hatched up by his sister-in-law as a matter of revenge (p. 13).

The State's witnesses testified that one Woodard, the actual murderer, was in conference with defendant in a churchyard just before the shooting. Deceased, with others, came out of the church, and were walking home. Defendant, with Woodard, passed the party half a mile from the church, and went on ahead. Beyond that point there was a place where the roads parted. After he had passed the parting of the roads deceased met Woodard, who came up swearing at him, and shot and killed him. Woodard whistled, and then fired another shot. On hearing the whistle, defendant, who was 200 yards away, ran up and fired two shots, injuring one of the bystanders. There is no testimony that defendant fired at deceased, and it would appear that deceased was killed at the first shot, although Woodard put another bullet into him after he lay on the ground. Defendant's sister-in-law said that defendant had previously boasted that he would hush deceased's mouth, etc. (p. 8). When defendant ran up to

the place he said, "shoot him again," but that was, as above stated, after the deceased was already killed (pp. 8, 9). One witness heard Woodard and defendant making a plan to watch for deceased on different lanes, so that he would be shot whichever way he went (p. 9), which would account for defendant's not being with Woodard at the time of the shooting. Deceased's brother testified that later he overheard defendant and Woodard talking together in the dark, and defendant said, "I wonder how many did we kill," and Woodard said, "I know God damned well * * * I shot one dead and I heard another one holler" (pp. 9, 10).

There is thus plenty of testimony that defendant was an accessory before the fact at least, and only failed to be present because he was watching another lane. The testimony also shows that defendant would have killed the deceased if the latter had not been already dead when he came up. It further tends to show that defendant shot and wounded a bystander. There was no testimony showing what his motive was, except general threats of defendant and Woodard against the "niggers," to which class deceased belonged, and against deceased as a particular "nigger."

ASSIGNMENTS OF ERROR.

All the assignments relate to the charge of the learned judge.

The exceptions are to a series of charges and modifications of requests to charge, almost all of them dealing with the single point of *constructive presence*.

ARGUMENT.

General character of exceptions.—The exceptions to the instructions of the court are nearly all in the irregular form so peculiar to the western district of Arkansas. Instead of excepting to the separate propositions of law made by the court, the defendant's counsel selects a half page or page of the court's charge, containing a large number of different propositions, some of them doubtless conceded to be correct, and excepts to the whole in a lump. Consequently, the court at the time does not know, and we have no means of ascertaining until the brief for plaintiff in error is filed in this court, what is the real complaint which counsel desires to make. This form of exception is an ambush. It is certainly not impossible that cases have been reversed which, if the exception had been more definite, would have been saved by modification by the court of its language. The mental characteristics of the jurors in the western district of Arkansas appear to be such that they can be reached best by a somewhat diffuse style of explanation, with frequent repetitions of the same idea in different forms, and a vast quantity of illustrative matter. Instructions of this kind are, of course, peculiarly liable to accidental error. The greater the number of words used to express an idea, the greater is the chance of some words slipping in inadvertently which would be subject for criticism.

The attention of the court is therefore respectfully called to the cases holding that general exceptions to a charge, which do not direct the attention of the court to the particular point objected to, raise no question for the

appellate court. (*Holder* v. *United States*, 150 U. S., 91, 92, and cases cited; *First Unitarian Society* v. *Faulkner*, 91 U. S., 415, 423; *Railroad Co.* v. *Varnell*, 98 U. S., 479, 482; *Bogk* v. *Gassert*, 149 U. S., 17, 25–6; *Mobile, etc., Railway* v. *Jurey*, 111 U. S., 584, 596; *Connecticut Mutual Life Insurance Co.* v. *Union Trust Co.*, 112 U. S., 250, 260–1; *Carver* v. *Astor*, 4 Pet., 1, 81; *Harvey* v. *Tyler*, 2 Wall., 328, 339; *Worthington* v. *Mason*, 101 U. S. 149.)

Exceptions raising questions of constructive presence.— There is a long series of exceptions raising this question in various forms, in forms as various as were the forms of the instructions on this point. We shall not attempt to discuss each *seriatim*, but shall undertake to set forth the authorities containing the law upon the general question of constructive presence.

The gist of these various instructions may be stated as follows: Overton was a principal offender and not a mere accessory before the fact, if he was watching at a distance of 200 to 250 yards in fulfilment of a conspiracy with Woodard to murder Russell, and if he was near enough to render assistance or near enough to embolden and encourage Woodard and nerve and strengthen his arm, so that he more readily and quickly fired the shot.

The law as to constructive presence distinguishing principals in the second degree from mere accessories was early settled. The authorities really in point are all somewhat ancient. The question does not seem to have arisen in the Federal courts since 1813, except in *United States* v. *Boyd*, 45 Fed. Rep., 851, which was reversed by this court on other grounds (142 U. S., 450); and the

cases in the State courts are nearly all based upon statutes, the law of homicide having become almost entirely statutory in character.

In very early times the doctrine of principals in the second degree in felony was not recognized by the text writers or the courts. All persons not principals in the first degree—that is, all persons besides the one who struck the blow or committed the other physical act complained of—were treated as mere accessories. At that time the classification, instead of including principals in the first and second degree, and accessories before and after the fact, included principals in the first degree and accessories before, *at*, and after the fact. (Foster's Crown Cases, 347–8, citing Bracton, Fleta, and the Mirror.) Thus, in 1367 a person appealed for being present, aiding, and commanding the murderer was assumed to be a mere accessory. (*William de C's Case*, Year Book, 40 Edw. 3, 42 A.)

The law was, however, settled to the contrary before 1553 (1 Mary 1), when *Griffith ap David ap John's Case* came before the court, reported by Plowden (pp. 97–100). Griffith was "present, aiding, comforting, and abetting the others to commit the said murder." The persons who actually struck the blows had escaped. Griffith was arraigned before Sir T. Bromley, chief justice of the King's Bench, and various other justices, among them Plowden himself. Chief Justice Bromley, while calling Griffith a principal in the second degree, doubted whether he could be tried until after the main offenders had been tried and convicted. The discussion among the justices is fully reported. They finally concluded that the presence of those who did not strike assisted in the result of the

affray because it "is the Cause of Terror, and Terror is the Reason that he receives the Wounds, and the Wounds are the Cause of his Death. And then inasmuch as both together, *viz*, the Wounds and the Presence of the others, who gave no Wounds at all, are adjudged the Cause of his Death, it follows that all of them, *viz*, those that strike, and the rest that are present, are in equal Degree and each partakes of the Deed of the other. And the Fact, as to him that is dead, and as to the Punishment of it (although it consists of two Parts), yet in Law it is without Division: And notwithstanding there is but one Wound given by one only, yet it shall be adjudged in Law the Wound of every one," etc. (p. 98). Mr. Plowden in his note to the case, says, referring to ancient law, "that the Law was then taken that they who were present and commanding to do the Act were only Accessaries and not Principals. But of late Time the Law has been held contrary in this Point, for now they are taken to be Principals by all the Sages of the Law. [Citing a case in 4 Henry 7.] * * * And in the Years of Henry 4, the Reader may see the Law often adjudged accordingly, *viz*, that those who are present and abetting to do the Act are Principals as well as he that does it. And it seems the Law was so changed in the Time of the said King Henry 4 where the former Course was reproved and corrected in this Point." (P. 100.)

The question then arose: What is presence? This is discussed by Lord Chief Justice Hale in 1680 (Historia Placitorum Coronæ, p. 439), as follows:

> As to the first: if divers persons come to make an affray, &c., and are of the same party, and come

> into the same house, but are in several rooms of the same house, and one be *killed* in one of the rooms, those that are of that party and that came for that purpose, tho in other rooms of the same house, shall be said to be present. *Dalt. cap.* 93, *p.* 241 (*f*).
>
> The Lord *Dacre* and divers others came to steel deer in the park of one *Pelham*, *Rayden*, one of the company, *killed* the keeper in the park, the Lord *Dacre* and the rest of the company being in other parts of the park, it was ruled that it was murder in them all, and they died for it. *Crompt.* 25, *a. Dalt. ubi supra*, 34 *H.* 8. *B. Coron.* 172 (*g*).
>
> The like in case of burglary, tho some stood at the lane's end or field-gate to watch if any came to disturb them, *Co. P. C. p.* 64. 11 *H.* 4. 13 *b.*, yet they are said to be burglars, because present, aiding and assisting to the burglary.

Lord Dacre's case, referred to by Hale, is discussed by Chief Justice Marshall in *United States* v. *Burr*, 4 Cranch, 492. Marshall remarks that all who were in the park could have rendered assistance; but that though they were in the conspiracy, they could not have been hung as principals if they had gone to another park or lost their way.

The question of constructive presence was discussed by Sir Michael Foster in 1746 (Foster's Crown Law, pp. 349–50). As this discussion is the foundation of all our subsequent law on the point, we quote it in full.

> When the law requireth the presence of the accomplice at the perpetration of the fact, in order to render him a principal, it doth not require a strict, actual, immediate presence, such a presence as would make him an eye or ear witness of what passeth.

> Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him; some to commit the fact, others to watch at proper distances and stations to prevent a surprize, or to favour, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law present at it; for it was made a common cause with them, each man operated in his station at one and the same instant toward the same common end; and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprize.
>
> I will not here multiply cases upon the head of constructive presence. This may be sufficient by way of illustration. Others founded in the same principle of mutual concert, aid, and protection will fall in in their proper places.

These rules were applied in the *Coal Heavers' Case*, 1 Leach C. L., 64, decided in 1768, when all the persons who took part in a certain riot were held as principals in an indictment under the Black Act. This was a Crown Case Reserved, decided by all the judges. To the same effect was *Midwinter's Case*, Foster, 415. In *The King* v. *Borthwick*, 1 Doug., 207, the court in 1779, speaking through Mr. Justice Willes, discharged a prisoner after a special verdict, because "it is not found that all the prisoners were of the same party and on the same pursuit, etc., when the fact was committed, as it is not found who gave the blow or who was present." (See also *United States* v. *Ross*, 1 Gall., 624.)

In *Rex* v. *Gogerly*, Russ. and Ry., 343, tried in 1818, defendant was indicted as a principal for larceny. It appears that the larceny was committed by another inside a shop and that prisoner was standing outside "to co-operate." The two judges presiding thought him a principal, but reserved the question for the full bench; and the nine judges there sitting unanimously confirmed their opinion. (See also *State* v. *Heyward*, 2 Nott. and McC., 312, 320; *Coyles* v. *Hurtin*, 10 Johns., 85.)

The question came up in Massachusetts in 1830, in the well-known case of *Commonwealth* v. *Knapp*, 9 Pick., 496. A Massachusetts statute of 1784 provided that "if any person shall aid, assist, abet, counsel, hire, command, or procure any person to commit the crime of murder, he shall be considered as an accessory before the fact." It was argued for the prisoner that this statute changed the law and turned the persons therein described into accessories. The court held, however, that "if it had been the intention of the legislature to restore the old distinction as to accessories *at the fact*, it would have described such offenders by apt words. * * * Construing the statute of 1784, c. 65, by its own language, we do not think it can be understood as relating to persons *present*, aiding and abetting in the commission of a felony" (pp. 514, 515). On the first trial "the evidence in the case tended to prove that Richard Crowninshield alone entered the house of White and there perpetrated the murder, and that prisoner was in a street about 300 feet distant from the house, aiding and abetting" (p. 512). On the second trial the facts seem to have been similarly shown, and the question of constructive presence was argued by Mr. Dex-

ter for the prisoner, and Mr. Webster for the State (p. 516). The court, after citing Foster, Hawkins, and Marshall, charged the jury as follows (p. 518):

> It must therefore be proved that the abettor was in a situation in which he might render his assistance in some manner to the commission of the offense. It must be proved that he was in such a situation by agreement with the perpetrator of the crime, or with his previous knowledge, consenting to the crime, and for the purpose of rendering aid and encouragement in the commission of it. It must also be proved that he was actually aiding and abetting the perpetrator at the time of the murder. But if the abettor were consenting to the murder, and in a situation in which he might render *any* aid by arrangement with the perpetrator for the purpose of aiding and assisting him in the murder, then it would follow as a necessary legal inference that he was actually aiding and abetting at the commission of the crime. For the presence of the abettor under such circumstances must encourage and embolden the perpetrator to do the deed by giving him hopes of immediate assistance, and this would in law be considered as actually aiding and abetting him, although no further assistance should be given.

Commonwealth v. *Lucas*, 2 Allen, 170, was a trial for larceny. The larceny was committed in a room upstairs, while defendant stood at the foot of the stairs with a light in his hand and received the money. Defendant had previously broken a window in the house to assist in the transaction. He contended that he was liable, if at all, only as an accessory, but the court overruled his contention, Chief Justice Bigelow saying (p. 171):

> To charge a person as principal, a strict, actual, immediate presence at the time and place of the com-

> mission of the crime is not necessary. Nor is it requisite that he should be so situated as to be an eye or ear witness of the criminal act. It is the expectation of aid, in case it is necessary to the completion of the crime, and the belief that his associate is near and ready to render it, which encourage and embolden the chief perpetrator and incite him to accomplish the act. By the countenance and assistance which the accomplice thus renders he participates in the commission of the offense. It is, therefore, sufficient to hold a party as principal if it is made to appear that he acted with another in pursuance of a common design; that he operated at one and the same time for the fulfillment of the same preconcerted end, and was so situated as to be able to furnish aid to his associate, with a view to insure success in the accomplishment of the common enterprise.

It is regarded in the text-books as well settled that watchers belonging to the same party with the main criminals are indictable as principals. (1 Russell on Crimes, 5th ed., pp. 156-7.) Persons abetting the principal in the first degree are accessories only if "so far absent when he actually commits it that he could not be encouraged by the hopes of any immediate help or assistance from them." (Id., pp. 164, 780; see also 1 Chitty Crim. Law, 256; Stark. Ev., 6th Am. Ed., 74; 1 Wharton Crim. Law, §§218, 219; 2 Hawkins P. C., ch. 29, §§7, 16; 1 Bishop Crim. Law, §653.)

The modern statutes in this regard are largely declaratory, so that the opinions of the State courts are still apt to cite the old common law rule as authoritative. Among more recent cases showing that the law as to principals in

the second degree has not been narrowed, we may cite *Breese* v. *State*, 12 Ohio St., 146; *Stephens* v. *State*, 42 id., 150; *State* v. *Hamilton*, 13 Nev., 386; *Tate* v. *State*, 6 Blackf., 110; *Stipp* v. *State*, 11 Ind., 62; *State* v. *Nash*, 7 Iowa, 347, 384–5; *State* v. *Shelledy*, 8 id., 477, 505; *Weston* v. *Commonwealth*, 111 Pa. St., 251, 272; *People* v. *Brown*, 59 Cal., 347, 353; *Brennan* v. *People*, 15 Ill., 511, 516; *White* v. *People*, 139 Ill., 143, 148, 150; *State* v. *Anderson*, 89 Mo., 312, 333; *State* v. *Chastain*, 104 N. C., 900; *Ruloff* v. *People*, 45 N. Y., 213, 216–7. Defendant in this case was well within the 300-yard limit of the Knapp case.

Miscellaneous exceptions.—We add a few remarks on the exceptions not strictly relating to the general rule of constructive presence.

The first assignment of error covers, among other things, the illustration taken from the case of *State of Nevada* v. *Hamilton*, 13 Nev., 386, 390. The court instance, as a remarkable illustration of constructive presence, this case where the man held to be so present was actually 32 miles off. It was a case of a stage robbery. Defendant was on top of a mountain, signalling the approach of the stage by means of a bonfire. The mountain was in another county. The use of illustrations is not error. (*Pointer* v. *United States*, 151 U. S., 396, 416.) This illustration was apt enough. It might be criticised, perhaps, on the ground that the Nevada case was decided under special statutory provisions. The court, however, in that case said that defendant would be a principal in the second degree or accessory at the fact under the rules

of the common law. This is doubtless true, and there can therefore be nothing prejudicial in using the case with the jury. The same remarks apply to the case of *Breese* v. *State*, 12 Ohio St., 146, referred to in the same assignment of error, and in this case no statute seems to have been involved. It is also to be added that the use of these illustrations was not the subject of a separate exception. There is other matter covered by the same exception; and it is not even probable that the use of an illustration, or the inapplicability of either illustration, occurred to the court as the ground of defendant's objection. Doubtless the objection was really made to the proposition of law to which these illustrations are appended.

The fifth assignment of error covers a long passage from the charge containing, with a number of totally independent things, a remark about defendant's conduct in "not even going near the body or anything of that kind" after the killing. There is nothing to show that any stress was laid upon this sentence as a ground of objection; on the contrary, the evidence, if any, which called forth this remark of the court is not contained in the record. We can not, of course, judge of the propriety of the remark without knowing its occasion; and its omission from the record emphasizes the fact that neither the court nor the district attorney had their attention called to it in any way. It is well settled that an exception to an instruction is valueless unless the evidence referred to is abstracted in the bill of exceptions. (*Worthington* v. *Mason*, 101 U. S., 149; *United States* v. *Morgan*, 11 How., 154, 158, and cas. cit.).

The eighth assignment of error objects to some remarks of the court with relation to defendant's testimony, which seem to be mere truisms. The court says that if defendant's testimony is corroborated "it is strengthened to the extent of its corroboration," and that if it is "not strengthened in that way," then it must be weighed "by its own inherent truthfulness, its own inherent proving power that may belong to it." This was part of the long discussion of the principles upon which the evidence of the various witnesses was to be weighed (pp. 23–25). While the defendant is not to be subjected to unfair comment from the court (*Hicks* v. *United States*, 150 U. S., 442, 452), there seems to be no harm in applying to him the rules applicable to all other witnesses. (2 Thompson on Trials, §2445, and cas. cit.)

The eleventh assignment of error relates to the court's charge that motive need not be affirmatively shown. The correctness of this proposition is settled. (*Pointer* v. *United States*, 151 U. S., 396, 414.)

It is respectfully submitted that the judgment should be affirmed.

EDWARD B. WHITNEY,
Assistant Attorney-General.

157-527

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~448.~~ 138

THOMAS BARDON, APPELLANT,

vs.

THE LAND AND RIVER IMPROVEMENT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED APRIL 27, 1891.

(14,596.)

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1 UNITED STATES OF AMERICA, } ss:
Western District of Wisconsin, }

At a stated term of the circuit court of the United States of America for the western district of Wisconsin, begun and held at the city of Madison, in said district, on the first Tuesday, being the second day, of December, A. D. 1890—present and presiding, the Honorable Romanzo Bunn, U. S. district judge—among other the following proceedings were had, to wit:

LAND AND RIVER IMPROVEMENT COMPANY }
vs.
THOMAS BARDON. }

Be it remembered that heretofore, to wit, on the first day of November, A. D. 1889, came the above-named complainant, by Pinney & Sanborn, its solicitors, and F. W. Downer, counsel, and filed its bill of complaint as follows, to wit:

Bill of Complaint.

2 To the honorable the judges of the circuit court of the United States for the western district of Wisconsin:

The Land & River Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey and having its principal office and place of business in the city of Red Bank, in said State of New Jersey, and a citizen of said State of New Jersey, brings this its bill of complaint against Thomas Bardon, of Ashland, in the State of Wisconsin, and who is a citizen of the State of Wisconsin.

And thereupon your orator complains and says that your orator is now the owner in fee simple absolute of the southeast quarter of section twenty-eight (28), in township forty-nine (49) north, of range fourteen (14) west, in the county of Douglas and the State of Wisconsin, and is in the actual and exclusive possession of said land.

And your orator further shows unto your honors that on or about the first day of August, A. D. 1856, one James D. Ray was the owner in fee simple of the land hereinbefore described, and on that day he executed and delivered to Augustine Chester and Benjamin Chester a certain contract or writing obligatory in and by which he covenanted and agreed to sell and convey to the said Augustine Chester and Benjamin Chester the said land hereinbefore described for the price of two thousand and ninety dollars, one thousand dollars whereof was duly paid by said Augustine Chester and Benjamin Chester at the execution and delivery of said contract, and the balance thereof was agreed to be paid to said Ray, five hundred and thirty dollars on August 1st, 1857, and five hundred and sixty dollars on the first day of August, 1858, according to the terms of two certain promissory notes then and there executed and
3 delivered by said Augustine Chester and Benjamin Chester to said Ray; and it was in and by said agreement covenanted

and agreed by the said Ray that on the payment of said notes he would execute and deliver to the said Augustine Chester and Benjamin Chester, at his own proper cost and expense, a good and sufficient deed for the conveying and assuring to them the fee simple of said land hereinbefore described, free from incumbrances, which deed should contain a general warranty and the usual covenants; and it was further agreed that the said Augustine Chester and Benjamin Chester should have immediate possession of said land; that the said agreement was not so executed as to be entitled to be recorded, but it was recorded in the office of register of deeds of said Douglas county, on the third day of March, A. D. 1858, in Book C of Mortgages, on page 301.

And your orator further shows unto your honors that, by divers assignments in writing, all the right, title, and interest of the said Augustine Chester and Benjamin Chester in and to the said contract so executed and delivered by said James D. Ray to the said Augustine Chester and Benjamin Chester and all their right, title, and interest in and to the land therein mentioned and hereinbefore described is and was purported to have been and to be assigned to and vested in one Daniel Sullivan, who claims and pretends that the whole purchase price of two thousand and ninety dollars mentioned in said contract has been fully paid and that he is entitled to a conveyance of the legal title of said land from the said Ray or from his grantee, the defendant, Thomas Bardon, as hereinafter stated.

And your orator further shows unto your honors that the said Augustine Chester and Benjamin Chester did not, nor did either of them, take possession of said land under their said contract for the sale thereof to them or otherwise or any part thereof, nor did the said James D. Ray take or have any possession thereof or of any part thereof, but the pos-ession of the whole thereof
4 was vacant and unoccupied from the time of the execution of said contract by said Ray to said Augustine Chester and Benjamin Chester until your orator took pos-ession thereof on or about the 15th day of July, A. D. 1888, and the said Augustine Chester and Benjamin Chester or any other person did not pay the taxes lawfully assessed thereon for the year 1866, and the said land was duly and lawfully sold by the county treasurer of said Douglas county, for the non-payment of such taxes, on the third day of September, A. D. 1867, to one Hiram Hayes for the sum of fourteen dollars and twenty-three cents, then and there paid by him, being the amount of such taxes so due and unpaid, together with the costs and charges of such sale, and a certificate of sale, in due form, was then and there executed and delivered therefore, and thereafter the said Augustine Chester, Benjamin Chester, or any other person having any interest in the said land did not redeem the same from said tax sale, and, the same being then and there wholly unredeemed therefrom, the said Hiram Hayes, on the fifth day of September, A. D. 1870, duly deposited in the office of the clerk of the county board of supervisors of said county of Douglas the said certificate of sale and made application for a tax deed thereon, and the said

clerk then and there executed and delivered to him, the said Hiram Hayes, a tax deed in due form and regular and fair upon its face, in and by which the said county of Douglas and the said State of Wisconsin granted and conveyed to the said Hiram Hayes, his heirs and assigns, the said land hereinbefore described, and the said tax deed was, on or about the seventh day of September, A. D. 1870, duly recorded in the office of the register of deeds of said Douglas county in Book One of Tax Deeds, on page 378; that at the time of the execution of said tax deed and at the time the same was recorded the said lands so conveyed thereby was vacant and
5 unoccupied and so remained continuously for the space of more than nine months and for more than three years, to wit, for more than fifteen years thereafter.

And your orator further shows unto your honors upon its information and belief that for the space of four years next preceding the recording of the said deed to said Hayes the said James D. Ray, the original owner of said land, and the said Augustine Chester and Benjamin Chester and all persons claiming under him or them or either of them failed or neglected to pay all the taxes levied and assessed against the said land, and the said Hiram Hayes did for the period of three years pay and redeem all the taxes levied and assessed against the said land from and after the date of the recording of such tax deed on the seventh day of September, A. D. 1870, and did also pay all taxes levied and assessed upon said land for five years next after the date of such tax deed.

And your orator further shows unto your honors that the said Hiram Hayes, being then and there the owner in fee simple of the said land under and by virtue of said tax deed and his constructive possession thereunder of more than three years and his payment of such taxes for five years after the date of such tax deed, for greater caution and security and to cure any defect of title under said tax deed and the running of the statute of limitations thereon, which might by some possibility exist, did not pay the taxes levied upon said land for the year eighteen hundred and seventy-six, and, the same being unpaid, the said land was duly sold for non-payment thereof by the treasurer of Douglas county on the eighth day of May, A. D. 1877, to the said Douglas county for the sum of eight dollars and ninety-four cents, taxes and charges due thereon, and the usual certificate of sale was duly issued to said county
6 upon said sale; that thereafter the said certificate was duly assigned to the said Hiram Hayes by said Douglas county, and the said Hayes on the first day of June, A. D. 1882, duly deposited the said certificate in the office of the county clerk of said Douglas county and applied for a tax deed thereon, and the county clerk then and there executed, acknowledged, and delivered to said Hiram Hayes a tax deed of said land, in due form of law, in and by which the said county and State granted and conveyed to said Hayes, his heirs or assigns, the said land, which said deed was duly recorded in the register's office of said Douglas county on the second day of June, A. D. 1882, in Book Two of Tax Deeds, on page 251; that at the time of the execution and recording of said tax

deed the said land so conveyed thereby was vacant and unoccupied, and so remained for the space of nine months and for the space of three years from and after the date of the recording of said tax deed.

And your orator further shows unto your honors by mesne conveyances the legal and equitable title and estate in fee simple of said Hiram Hayes in and to the land hereinbefore described, by virtue of the said tax deeds so executed and delivered to him as aforesaid and the operation of the statutes of limitation thereon and under his constructive possession of said land under the same and the aforesaid payment of taxes for four years and for five years and non-payment by the original owners, has become and is no- invested in your orator, and your orator now is seized and possessed of said land in fee simple absolute by virtue of the said tax deeds and such possession, non-payment, and payment of taxes and limitations and the aforesaid conveyance of the said land by said Hayes.

And your orator further shows unto your honors that on or about the sixth day of March, A. D. 1878, the said James D. Ray, together with his wife, Caroline E. Ray, executed and de-
7 livered to one James Bardon, of Superior, Wisconsin, their certain release or conveyance in writing, under their seals, in and by which for valuable consideration they did grant, bargain, sell, release, and convey to the said Bardon all their right, title, and interest in and to the land hereinbe*g*ore described, and that on or about the fourth day of January, A. D. 1877, the said James Bardon, together with his wife, Emma W. Bardon, did execute, acknowledge, and deliver to the defendant, Thomas Bardon, a deed of conveyance to the said land, purporting to convey the same to said Thomas Bardon.

And your orator further shows your honors that the said Thomas Bardon also claims and pretends that he has some right, title, or interest in or to the said land by virtu- of a certain tax deed issued to one Thomas A. Kiley on the 21st day of May, A. D. 1863, all the right, title, and interest therein of the said Kiley having become vested in the said Bardon by me*a*se conveyances; that the said Thomas Bardon sets up a claim by virtue of the conveyance to him of the interest of said Ray in said land and by virtue of the conveyance to him of the interest of said Thomas A. Kiley under the tax deed so executed to him, and claims and pretends to be entitled to some valid and subsisting interest in said land by virtue of such conveyances; but your orator alleges that the same is, in fact, subject and subordinate to its rights as owner of said land in fee simple, as aforesaid, but the said claim on his part operates to cast a cloud upon the title of your orator to said land.

To the end, therefore, that the said defendant, Thomas Bardon, may, if he can, show why your orator should not have relief hereby prayed, and that he may full, true, and perfect answer make to all and singular the matters and things hereinbefore stated and charged as fully and particularly as *i*d the same were *in*
8 hereinafter repeated and he hereunto distinctly interrogated, according to the best of his knowledge, information, and be-

lief, but not on oath, the necessity of the answer of defendant being hereby expressly waived; that the said tax deed so executed and delivered to the said Thomas A. Kiley may be held and adjudged to be void and of no effect and may be given up and cancelled, as well as any and all conveyances of any right, title, or interest under the same; that the said quitclaim deed so executed and delivered by the said James D. Ray to the said James Bardon may be declared void and of no effect and may be delivered up and cancelled, and that any and all conveyances of any right, title, or interest under the same may be declared void; that the said defendant may be declared and adjudged to have no lawful claim, right, title, or interest in or to said land or any part thereof under or by virtue of the said pretended deeds and conveyances or otherwise and may be perpetually restrained and enjoined from setting up any claim or title whatsoever in or to said land or any part thereof, and that your orator may be decreed and adjudged to hold the legal title to said land free and discharged of and from any title or claim of the said defendant, and that your orator may have such further and other relief as the nature of the case may require and as to your honors shall seem meet and in accordance with equity.

May it please your honors to grant unto your orator the writ of subpœna of the United States of America to be directed to the defendant, Thomas Bardon, commanding him by a certain day and under a certain penalty therein named personally to be and appear before your honors in this *honor*, then and there to answer all and singular the premises and to stand to, abide, and perform such order and decree therein as to your honors shall seem meet
9 and agreeable to equity and good conscience; and your orator will ever pray, etc.

PINNEY & SANBORN,
Complainant's Solicitors.

F. W. DOWNER, *Of Counsel.*

On the same day, to wit, on the 1st day of November, A. D. 1889, a writ of subpœna issued out of said clerk's office against said defendant in said entitled cause; which said writ, together with the return of the marshal thereon, is in the words & figures following, to wit:

Subpœna.

10 UNITED STATES OF AMERICA, } ss:
Western District of Wisconsin, }

The President of the United States of America to Thomas Bardon, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the western district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of December next ensuing, at Madison, to answer to a bill of complaint exhibited against you in our said court by the Land and River Improvement Com-

pany, and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Thomas Bardon if to be found in his district, and due return thereof make.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Madison, in the said district, this 1st day of November, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth.

F. M. STEWART, *Clerk.*

PINNEY & SANBORN, *Solicitors.*

It is ordered by our said court that the said Thomas Bardon, the defendant aforesaid, do enter his appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

F. M. STEWART, *Clerk.*

11 Served on the within-named Thomas Bardon by delivering to him personally a copy of this subpœna this 30th day of November, 1889.

D. C. FULTON,
U. S. Marshal,
By JOHN BOLTON, *Dep'y.*

12 Afterward, to wit, on the fifth day of April, 1890, came the defendant, by his solicitor, W. F. Bailey, and Silverthorn, Hurley, Ryan & Jones, of counsel, and filed his answer as follows:

13 In the Circuit Court United States, Western District of Wisconsin.

LAND AND RIVER IMPROVEMENT COMPANY, Plaintiff,
vs.
THOMAS BARDON, Defendant.

Answer.

The defendant, Thomas Bardon, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much as this defendant is advised is material to answer unto, does say that:

First. As to whether the said complainant, The Land and River Improvement Company, is a corporation organized under and by virtue of the laws of the State of New Jersey or that it is a corporation and whether it is a citizen of the State of New Jersey the defendant herein has no knowledge or information sufficient to form a belief, and therefore denies the same and the allegation in the complainant's bill alleging the complainant's incorporation and residence in that State.

Second. The defendant denies that the complainant is now the owner, in fee simple or otherwise, of the lands mentioned and described in the bill of complaint herein or that it has any right, title, or interest in said land or any part thereof, and avers and alleges the fact to be that the defendant is the owner in fee simple absolute of the said lands by virtue of a good and sufficiant deed of conveyance in the law from the original patentee from the United States to one James Bardon, dated the 6th day of March, 1878, and a good and sufficient deed of conveyance in the law from said James
14 Bardon and wife to the defendant herein.

The defendant further says that at the time of the purchase of the said lands and conveyance he had no information, notice, or knowledge that any contract had been made or existed between the original patentee, James D. Ray, and Augustin Chester and Benjamin Chester for the sale and conveyance to said Augustin and Benjamin Chester of the land described in the bill of complaint herein, but that he has since been informed that there was such a contract made and entered into by and between said parties on or about the 1st day of August, 1856, which was substantially in its terms as stated in said bill, but avers the fact to be that the payments therein provided and stipulated to be made were never made, nor was any possession of said lands at any time taken under and by virtue of the terms of said contract, nor was said contract recorded or acknowledged and witnessed, nor was any action or proceeding commenced by either of said parties or their assigns asking for a specific performance of said contract; that no taxes that were assessed upon said lands subsequent to the date of said contract have been paid by said Chesters or their assigns or either of them, although by the terms of said contract they obligated themselves so to do as one of the conditions thereof; that since the time when the payments therein provided became due said lands have become greatly enhanced in value, such increase having taken place completely within the past five years, the said lands now being of the value of one hundred thousand dollars and more; that by reason of the premises and the long-continued laches of the said Chesters and their assigns and the increase of value thereof such contract, by its specific terms and conditions, as well as in equity, became forfeited, and all rights thereunder to the vendee therein to
15 enforce a specific performance thereof became lost and abandoned.

Third. The defendant denies that the tax deeds or either of them mentioned and described in the bill of complaint were in due form or regular upon their face, and avers the fact to be that the tax deed mentioned and referred to in said bill and bearing date the 5th day of September, 1870, was and is void upon its face, it appearing therefrom that four separate several tracts of land were not separtely sold, but were sold together as one tract and for one gross amount; that said lands and each tract thereof were at all times since they were taxable and ever since until within the past year have been and so remained entirely vacant and unoccupied, whereby and by reason of the premises the constructive possession thereof remained

in the original owner and his assigns regardless of the fact of the execution of said deed, and the statute of limitations, being chapter 22 of the Laws of Wisconsin for the year 1859 and the acts amendatory thereto, did not run in favor of said deed or the grantee therein, but, on the contrary, in favor of the original or record owner, whereby all actions and proceedings on the part of the grantee therein and his assigns to recover the possession of said lands or to quiet his title thereto or other proceedings in relation to said lands, including this action, *was* and became barred, and the defendant especially pleads in this action the bar of the statute and insists upon such plea in bar.

Fourth. The defendant, further answering, says that he has no knowledge or information sufficient to form a belief nor has he been able to discover from the records in the office of the county treasurer, county clerk, or town treasurer whether the said James Ray or persons claiming title through or under him paid the
16 taxes on said lands for the four years next preceding the recording of said tax deed or failed to pay the same for such period, and therefore denies the allegations made upon information and belief in said bill that said Ray and all persons claiming under him failed and neglected to pay all the taxes levied and assessed against said land for the four years next preceding the recording of said deed.

Fifth. The defendant, further answering, avers that the said Hiram Hayes, the grantee in said tax deed, or his assigns did not pay or cause to be paid the taxes levied and assessed upon said lands for five years next after the date of said deed, and denies that he paid such taxes or redeemed said lands from the sale for such taxes for three years after the recording of said deed.

Sixth. The defendant, further answering said bill, denies that the county treasurer of said county on the 3rd day of September, 1867, or any other day in said year 1867 sold said lands for taxes, and further denies that there was in fact any tax levied upon said lands or that said lands were returned as delinquent to the county treasurer for the non-payment of any tax levied or assessed upon or against them or were returned as delinquent, and alleges, on the contrary, that the alleged tax of 1866, mentioned in said bill of complaint, was not in fact a tax, but an unauthorized and unlawful and fraudulent entry made in a book which was not the assessment-roll by a person who was not at the time and not been the town clerk of the town in which said lands were situated nor a deputy town clerk and did not at such time or at any other time pretend or assume to be either such town clerk or deputy or to have any authority, power, or jurisdiction to levy said pretended tax or enter the same into or upon said roll; that such entry consisted merely of a description of the land and of figures set opposite thereto
17 written in a book in which all the writing and entries were made by such person; yet, notwithstanding such illegal and fraudulent entry, the sum therein inserted was in fact paid before the issuing of the tax deed first mentioned in complainant's said bill.

Seventh. The defendant, further answering, says, upon information and belief, that in the year 1866, and in the town wherein said lands were then situate, no fair and equal or uniform assessment was made of the property in said town; that no assessment was made of the personal property liable to taxation therein; that the real estate therein was not assessed at its true or actual value, and that the assessor of said town made no assessment-roll, and in the year 1867 the said lands were not returned by the town treasurer of said town to the county treasurer of said county for taxes of 1866, and defendant alleges that there are no records existing of any such assessment, tax, or delinquent return. Defendant further denies the allegation of the bill of complaint that a tax-sale certificate was issued by the county treasurer of the said county upon said lands for the tax of 1866 or tax sale of 1867, and denies that any tax deed was executed or acknowledged or recorded based upon any such tax, tax certificate, or tax sale, and denies that notice of any such tax sale was published or posted as by law required, and alleges that the notice required by law was not published in said county prior to the time when tax deeds became due upon the tax sale of 1867.

Eighth. And for a further answer the defendant alleges that this action was commenced after the 1st of January, 1889, and that by reason of the facts hereinbefore set forth and the statutes of limitation of the State of Wisconsin in force in the year 1866 or
18 thereafter and applicable to the facts set forth in this answer the defendant is barred from claiming any right, title, or interest in said lands under or by virtue of the said tax deed first mentioned in said bill of complaint, and that the plaintiff is thereby barred from bringing or maintaining this action, and the defendant relies upon the bar of chapter 22 of the General Laws of Wisconsin passed in 1859 and of all other statutes of limitation of said State subsequently enacted applicable to the facts set forth in this answer and barring this action.

Ninth. The defendant, further answering said bill, avers and says that the tax deed mentioned and referred to in said bill and bearing date the second day of June, 1882, was and is void upon its face, it not appearing therefrom what land is thereby sold or conveyed, and it further appearing therefrom that four separate and several tracts of land, the description of which is not given in said deed, were not sold separately, but were sold together as one tract and for one gross amount and without any designation as to section, township, and range in which such tracts were located; that said tracts of land, as hereinbefore stated, having been vacant and unoccupied, the constructive possession remaining with the original title, the statute of limitations, being chap. 22 of the General Laws of Wisconsin for the year 1859 and the acts amendatory thereto, did not run in favor of said tax deed or the grantee therein, but, on the contrary, in favor of the original or record owner, whereby all actions and proceedings on the part of the grantee therein named and his assigns to recover the possession of said lands or to quiet his title thereto or other proceedings in relation to the land, including this action, *was* and

became barred, and the defendant especially pleads in this
19 action the bar of the statute and insists upon such plea in bar.

Tenth. The defendant, further answering, says that said tax deed first mentioned in said bill and bearing date the fifth day of September, 1870, was executed without any warrant or authority in law and by a person who had no right, power, or authority to execute said deed or to affix the seal of the board of supervisors thereto, not being either the county clerk of said county or a deputy county clerk thereof, and such deed was not the deed of the State of Wisconsin and the county of Douglas.

Eleventh. The defendant, further answering, says that, after the tax sale of lands in said county for the taxes of 1876 was completed, the said Hiram Hayes solicited from the county board of supervisors of said county, and obtained, a proposition permitting him to redeem said lands from all taxes, interest, and charges against them, and to credit such taxes, interest, and charges to said county in a bill which had accrued or was accruing against said county for legal services rendered and to be rendered by said Hiram Hayes to said county; that afterwards, in November, 1879, he rendered a bill to said county for such services, in which he credited said county with the amount of taxes, interest, and charges which the said county claimed to be due thereon for the year 1876, and so paid the same and redeemed said lands therefrom.

Twelfth. The defendant, further answering, upon information and belief says that in the year 1876, and in the town wherein said lands were then situate, no fair or equal or uniform assessment was made of the property in said town; no assessment was made of the personal property liable to taxation therein; the real estate therein was not assessed at its true or actual value; the assessment-roll required by law was not made, and in the year 1877 the said
20 lands were not returned by the town treasurer of said town to the county treasurer of said county for the tax of 1876, and defendant alleges that there are no records of any such assessment-roll or delinquent return. Defendant further denies the allegation of the bill of complaint that said lands were sold for taxes of 1876 and the allegation that a tax certificate of such sale was issued, and denies that a tax deed was executed, acknowledged, or recorded based upon such tax certificate or tax sale, and alleges that no notice of such tax sale was posted or published as by law required, and alleges the notice required by law was not published in said county prior to the time when tax deeds became due upon the tax sale of 1877.

Thirteenth. The defendant, further answering, says that he is ready and willing to pay any and all sums that may in equity be due and payable to the said complainant or his grantors for taxes and charges upon said lands which they or either of them have paid or may on any account be equitably entitled to receive payment of from this defendant or his grantors, with interest thereon at such rate as in equity may be proper.

And the defendant, further answering, denies each and every

allegation of the complaint not hereinbefore expressly admitted, qualified, or denied.

Wherefore this defendant prays to be hence dismissed and recover judgment against plaintiff for his costs.

THOMAS BARDON, *Defendant.*
W. F. BAILEY,
Sol. for Defendant.

SILVERTHORN, HURLEY, RYAN — JONES,
Of Counsel for Defendant.

21 Afterwards, to wit, on the 19th day of April, 1890, came the complainant, by its solicitors, and filed its replication to answer as follows:

Circuit Court of the United States, Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY
vs.
THOMAS BARDON.

The replication of The Land and River Improvement Company, complainant, to the answer of Thomas Bardon, defendant.

This repliant, saving and reserving unto *him*self all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that *he* will aver and prove *his* said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready
22 to prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* hath already prayed.

PINNEY & SANBORN,
Compl't's Sol'rs.

23 Afterwards, to wit, on the 16th day of June, 1890, come the parties and filed stipulation relating to answer as follows:

Circuit Court United States, Western District of Wisconsin.

LAND AND RIVER IMPROVEMENT COMPANY
vs.
THOMAS BARDON.

It is stipulated that the answer in the above-entitled action may be amended by striking out the words "of Superior, Douglas county, Wis.," in two places in said answer, to wit, on the 2d & 3d lines of the seventh paragraph of said answer and on the 2d & 3d lines of

the twelfth paragraph thereof, between the word "town" and the word "wherein" in both of said paragraphs; and it is further stipulated that the original answer upon file may be changed to correspond with the amendment hereby permitted, and that no copy of the answer as so amended need be served.

Dated June 16, 1890.

PINNEY & SANBORN, *Compl't's Solicitors.*
SILVERTHORN, HURLEY, RYAN & JONES,
Counsel for Def't.

24 Afterwards, to wit, on the 19th day of July, 1890, came the complainant, by its solicitors, & filed notice, petition, and proposed supplemental bill of complaint as follows:

25 Circuit Court of the United States for the Western District of Wisconsin.

THE LAND & RIVER IMPROVEMENT CO., Complainant,
vs.
THOMAS BARDON, Defendant.

To W. F. Bailey, solicitor for defendant:

You will please take notice that on Monday, the 28th day of July, A. D. 1890, at three o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, the complainant in this cause will apply to said court, at the United States court-room, in the city of Madison, in said district, for leave to file the supplemental bill in this cause, a copy of which is hereto annexed, and for a temporary restraining order, according to the prayer of said bill, enjoining the defendant, Thomas Bardon, his agents, solicitors, and counsel, from prosecuting the said suit for the possession of said premises brought by him and now pending in the circuit court for Douglas county, in said State, and for an order fixing a time for the hearing of an application to enjoin said defendant pending this suit from proceeding at law in respect to the matters set up in said original bill, as prayed for in said supplemental bill, and for such other or further relief as shall be just.

Dated July 19th, 1890.

PINNEY & SANBORN,
Complainant's Solicitors.

26 UNITED STATES OF AMERICA:

In Circuit Court for the Western District of Wisconsin.

THE LAND & RIVER IMPROVEMENT CO., Complainant,
vs.
THOMAS BARDON, Defendant.

The petition of The Land & River Improvement Company, complainant in the above-entitled cause, respectfully shows that it is the complainant in said cause, and that it is necessary to file a supple-

mental bill in said cause for the purpose of restraining the prosecution by the defendant, Thomas Bardon, of an action brought by him in the circuit court of said State for Douglas county involving the same matters which are involved in this suit and which if prosecuted will defeat the jurisdiction of this court in this action; that a copy of said bill is hereto annexed, to which reference is had, and the same is made a part of this petition; and said complainant in said suit prays that it may be allowed to file the said supplemental bill in this honorable court, and that an order may be made by said court restraining the said proceedings at law mentioned in said supplemental bill until an application for a temporary injunction pending this suit can be heard by this honorable court.

PINNEY & SANBORN,
Solicitors for said Land & River Improvement Company.

27 Circuit Court of the United States for the Western District of Wisconsin.

THE LAND & RIVER IMPROVEMENT CO., Complainant,
vs.
THOMAS BARDON, Defendant.

To the honorable the judges of the circuit court of the United States for the western district of Wisconsin:

The Land & River Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey and having its principal office and place of business in the city of Red Bank, in said State of New Jersey, and now and at the time of filing the original bill hereinafter mentioned a citizen of said State of New Jersey, and having power to purchase, improve, and sell lands, buildings, and docks both in said State of New Jersey and in the State of Wisconsin, brings this its supplimental bill of complaint against Thomas Bardon, of Ashland, in said State of Wisconsin, and who is a citizen of said State of Wisconsin.

And thereupon your orator complains and says that on or about the first Monday of November, 1889, your orator exhibited its original bill in this cause to this honorable court against said defendant; that your orator then was and still is the owner in fee simple of the southeast quarter of section 28, in township 49 north, of range 14 west, in said western district of Wisconsin, which is now and was then of the value of seventy-five thousand dollars and was then and still is in the actual and exclusive possession thereof; that your orator was the exclusive owner in law and in equity of the said land by virtue of a certain tax deed of conveyance executed and delivered by the county of Douglas, in the State of Wiscon-
28 sin, to one Hiram Hayes on the fifth day of September, 1870, and duly recorded in the office of the register of deeds of said county of Douglas, in said State, and by virtue of a certain mesne conveyance by said Hiram Hayes to your orator, and also by virtue of a certain other tax deed of conveyance to your orator,

duly executed and delivered by said Douglas county to the said Hiram Hayes on the second day of June, A. D. 1882, and duly recorded in the office of the register of deeds in said Douglas county, in the State of Wisconsin, and by virtue of certain mesne conveyances by said Hiram Hayes to your orator, and by virtue of the running of the statute of limitations of said State of Wisconsin upon said tax titles.

And your orator further shows unto your honors that the said defendant, Thomas Bardon, at the time of filing of said original bill then claimed and pretended that he had some right, title, or interest in and to said land under and by virtue of a certain deed of conveyance made by the original owner of said land, one James D. Ray, to whom said land was conveyed by the United States of America, said deed from said Ray having been made to one James Bardon and the said James Bardon having conveyed said premises or pretended to convey the same to said defendant, Thomas Bardon, and that the said Thomas Bardon also claimed title to said premises by virtue of a certain tax deed to one Thomas Kiley, which said deed was and is void upon its face and was given before the tax deeds under which your orator claims title as aforesaid; that the said pretended claim of the said defendant, Thomas Bardon, was and is invalid, and that such claim operated to cast a cloud upon the title of your orator to said land, as in and by said original bill of complaint now on file in this honorable court, reference being thereto has, will more fully appear, to which your orator refers for greater certainty; that in and by the said original bill your orator prayed that the said tax deed
29 executed and delivered to the said Thomas A. Kiley and under *and under* which the said defendant claims might be given up and cancelled and declared void, and that the said quitclaim deed executed by the said James D. Ray to the said James Bardon, as well as any and all conveyances of all right, title, or interest under the same to the said defendant, might be declared void, and that the said defendant, Thomas Bardon, might be declared and adjudged to have no lawful claim, right, title, or interest in or to said land or any part thereof under or by virtue of his pretended deeds or conveyance or otherwise and might be perpetually enjoined from setting out any claim or title whatsoever in or to said land or any part thereof, and that your orator might be decreed and adjudged to hold the legal title to said land freed and discharged of any from any title or claim of said defendant, and that your orator might have such other or further relief as the nature of the case might require and as to your honors should seem meet and in accordance with equity; that the defendant appeared and put in his answer to said original bill, setting up in said answer that the said tax deed under which your orator claims, dated September 5th, 1870, was void upon its face, and that said lands were at the time of the recording of said deed vacant and unoccupied and so remained, and that the said defendant, by virtue of the statute of limitations of said State of Wisconsin, *and* was the owner of said land, and that the statutes of limitations has run thereon in favor of

said defendant; that the said tax deed was executed without warrant or authority of law; that the county treasurer had no authority, power, or jurisdiction to sell said lands for the non-payment of taxes, and that said tax deed bearing date June 2nd, 1883, was and is void upon its face, and that the statute of limitations of this State had run thereon in favor of said defendant and against your
30 orator; that the said defendant was seized of said lands in fee as the grantee by mesne conveyances of the original patentee and owner of said lands; that on or about the first Monday of May, A. D. 1980, your orator duly filed its replication to the said answer, *to* which answer — replication, on file in this honorable court, reference being thereto had, will more fully appear.

And your orator further shows unto your honors that afterwards and on or about the 15th day of May, A. D. 1890, upon the application of complainant*y* and upon due notice to the defendant, this honorable court made an order assigning a term probatory in this cause limiting the time within which the complainant should take its proofs in support of its said original bill, a time thereafter within which the defendant should take his proofs in support of his answer, and a time thereafter within which your orator should take its proofs in reply; that in pursuance of said order your orator gave notice to the defendant that the proofs on its behalf in said cause would be taken by and before I. W. Gates, one of the examiners of this court, at his office, in Superior, in said district, on the 27th day of May, A. D. 1890, at ten o'clock in the forenoon; that counsel for defendant attended the taking of said proofs on that day at said place before said examiner, and a part of the proofs of your orator were then and there taken, but the same were not completed; and thereafter and on the seventh day of June, A. D. 1890, it was stipulated in writing between the said defendant and your orator that the time for taking the testimony of your orator in support of said original bill and the time for taking the testimony of said defendant in support of his said answer be extended until the 15th day of August, 1890, and that the said order for a term probatory might be modified accordingly; that the testimony on both sides of said case might be taken on Tuesday, the 22nd day of July, A. D. 1890, and that the time was thereby fixed for the taking of the testimony
31 on both sides if the defendant should desire to take his proofs then, and your orator then intended and still intends to proceed with the taking of said proofs and to complete the same on said 22nd day of July, A. D. 1890.

And your orator further shows unto your honors that after said cause was so put at issue, and after the said testimony and a considerable part of the testimony in said cause on the part of the complainant had been taken therein, and after said stipulation as aforesaid, and on or about the 30th day of June, A. D. 1890, the said defendant, Thomas Bardon, by Messrs. Silverthorn, Hurley, Ryan & Jones, his attorneys, commenced an action in the circuit court of Wisconsin for Douglas county to recover possession of said lands against your orator and one John Darley, who occupied said premises when the said original bill was filed under your orator as

its mere custodian, but to whom your orator has since executed a lease thereof, so that he now holds possession of said premises under and for your orator, and whereby it still possesses and enjoys the said premises under its aforesaid title to said lands; that a copy of complaint in said action is hereto annexed and marked Exhibit A and made a part of this your orator's supplemental bill of complaint, and to which it prays leave to refer accordingly; that afterwards and on or about the 21st day of July, A. D. 1890, your orator and the said John Darley answered the said complaint, and a copy of said answer is hereto annexed and marked Exhibit B and made a part thereof, and to which your orator prays leave to refer accordingly; that the said action is still pending in said circuit court for Douglas county, Wisconsin, upon the issues so joined as aforesaid, and that a term of said court at which the same may be tried is to be by law begun and held in and for said Douglas county at the city of Superior on the 19th day of August, A. D. 1890, and that your orator is
32 informed and believes that the defendant, Thomas Bardon, acting by and through his attorneys aforesaid, acting as his agents and counsel, gives out that he and they will force the said cause to trial at the term and place aforesaid, to the manifest prejudice and great injury of your orator, whereby it will be put to great and needless expense and be twice vexed with the same controversy; that the question of legal title to said lands is the sole and only question involved in both the said causes, and that your orator's said suit in this court has been commenced and was at issue and a considerable part of the proofs therein had been taken before the said defendant commenced his said suit in the circuit court for Douglas county aforesaid, and that the conduct of the said defendant, Thomas Bardon, in this behalf is unjust, illegal, and inequitable and tends to the manifest wrong and injury of your orator in the premises, and that the bringing of said suit by him, as your orator is informed and believes, was for the purpose of ousting the jurisdiction of this honorable court in the said premises and rendering nugatory *and* decree which it may pronounce herein.

To the end, therefore, that the said Thomas Bardon may, if he can, show why your orator should not have the relief hereby prayed and should not have the relief prayed for in and by its said original bill as it has already prayed, and that an injunction pending this suit may issue from this honorable court restraining the said defendant, Thomas Bardon, his agents, counsel, and attorneys, from further prosecuting the said suit so commenced by him against your orator and the said John Darley as aforesaid, and also that the said Thomas Bardon, his agents, counsel, or attorneys, may be perpetually enjoined and restrained from prosecuting or carrying on the said suit for the possession and recovery of said premises in said State court and may be decreed to pay the costs of this supplemental bill,
33 and that your orator may have such further or other — as the nature of the case may require and as to your honors shall seem meet and agreeable to equity—

May it please your honors to grant to your orator not only the writ or writs of injunction of the United States of America issuing

out of and under the seal of this honorable court, to be directed to the said defendant, Thomas Bardon, restraining him from proceeding at law against your orator touching any of the matters it question, but also the writs of subpœna of the United States of America to be directed to the said Thomas Bardon, commanding him, by a certain day and under a certain penalty therein named, personally to be and appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to, abide, and perform such order or decree therein as to your honors shall seem meet and agreeable to equity; and your orator will ever pray, &c.

PINNEY & SANBORN,
Complainant's Solicitors.

F. W. DOWNER, *Of Counsel.*

UNITED STATES OF AMERICA, }
Western District of Wis., } *ss:*

A. L. Sanborn, being duly sworn, says that he is one of the solicitors for the complainant in the above-entitled cause; that he read the foregoing supplemental bill and knows its contents, and the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to them he believes it to be true; that this affidavit is made by him and not by an officer of said corporation for the reason that it is a foreign corporation and affiant is not informed whether any of its officers are at present within this State, and that it would be highly inconvenient to obtain the verification of any officer of said corporation, and the facts above stated are, many of them, within the personal knowledge of this deponent, and all of said matters have been within his personal charge and control.

A. L. SANBORN.

Subscribed and sworn to before me this 21st day of July, A. D. 1890.

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34 EXHIBIT A.

In Circuit Court, Douglas County.

THOMAS BARDON, Plaintiff,
vs.
JOHN DARLEY and LAND AND RIVER IMPROVEMENT COMPANY, Defendants. } Place of Trial, Douglas Co.

The plaintiff complains and alleges that on the tenth day of October, A. D. 1889, he was, ever since has been, and now is the absolute owner in fee simple and entitled to the possession of the following-described real estate, situate in the county of Douglas, State of Wisconsin, viz:

The southeast quarter of section twenty-eight, in township forty-nine north, of range fourteen west.

That the defendant John Darley actually occupies the said premises as tenant of the defendant Land and River Improvement Co.

That the defendants are now in possession of said premises; that the defendants unlawfully withhold the possession thereof from the plaintiff and have so unlawfully withheld the possession thereof since the day and year first above mentioned, to his damage ten thousand dollars.

Wherefore the plaintiff demands judgment for the possession of said premises; that he is entitled to the same in fee simple, and for the sum of ten thousand dollars damages, besides the costs of this action.

35 SILVERTHORN, HURLEY, RYAN & JONES,
Plaintiff's Attorneys, Wausau, Wis.

W. F. BAILEY,
Of Counsel, Eau Claire, Wis.

EXHIBIT B.

STATE OF WISCONSIN:

Circuit Court for Douglas County.

THOMAS BARDON, Plaintiff,
vs.
JOHN DARLEY and THE LAND & RIVER IMPROVEMENT COMPANY, Defendants.

The above-named defendants, answering the complaint in this action, by Pinney & Sanborn, their attorneys, admit that the defendant John Darley actually occupies the premises described in said complaint as tenant of the defendant The Land and River Improvement Company, and that the defendants are now in possession of the said premises, but they deny each and every allegation, matter, or thing stated in the plaintiff's complaint.

Second. For a further and separate defense the above-named defendants allege that the said premises described in the plaintiff's complaint were on the third day of September, A. D. 1867,

36 at a regular and lawful tax sale, duly and lawfully sold by the county treasurer of Douglas county for the non-payment of taxes lawfully assessed thereon for the year 1866 to one Hiram Hayes for the sum of fourteen dollars twenty-three cents, then and there paid by him, being the amount of such taxes so due and unpaid, together with the costs and charges of such sale, and a certificate of sale thereof in due form of law was then and there executed and delivered to him therefor; that at the time said taxes were assessed and levied on said premises the said premises were lawfully and rightfully subject to taxation.

That afterwards and on the 5th day of September, 1870, the said premises remaining wholly unredeemed from said tax sale, the said Hiram Hayes duly deposited in the office of the clerk of the county board of supervisors of said county of Douglas his said certificate of sale and made application for a tax deed thereon, and that on the

day and year last aforesaid the said clerk of the county board of supervisors duly executed and delivered to him, the said Hiram Hayes, a tax deed in due form and regular and fair upon its face, in and by which the said county of Douglas and the said State of Wisconsin granted and conveyed to the said Hiram Hayes, his heirs and assigns, the said land described in said complaint;
37 that said tax deed was duly acknowledged so as to entitle the same to be recorded, and was, on or about the seventh day of September, 1870, duly recorded in the office of the register of deeds of said Douglas county in Book One of Tax Deeds, on page 378; that at the time of the execution and recording of said tax deed the said lands so conveyed thereby were vacant and unoccupied and so remained continuously for the space of more than nine months thereafter and for more than three years thereafter, to wit, for more than fifteen years thereafter, and until these defendants took possession thereof under and by virtue of the tax deed hereinbefore mentioned and a deed of conveyance thereof from the said Hiram Hayes to one Edward Buchanan, dated on the second day of June, 1883, and under and by virtue of a deed from the said Edward Buchanan to the said defendant, The Land and River Improvement Company, executed on the thirteenth day of June, 1883; and these defendants aver that the said Land & River Improvement Company is now, by virtue of the premises hereinbefore stated, the owner in fee thereof and has a good right and lawful authority to hold and occupy said premises under and through its said tenant, the defendant Darley, or otherwise, and they submit and insist that all right to recover said premises or any part or portion thereof by the said plaintiff is barred by the statutes of limit-
38 ation in such cases made and provided, to wit, section 1216*d* of the Revised Statutes of Wisconsin and section 1188 of said Revised Statutes.

Third. The said defendants, for a further and separate defense, allege that the said lands and premises described in said complaint were duly sold on the 8th day of May, 1877, by the county treasurer of Douglas county to said Douglas county for the sum of eight dollars ninety-four cents ($8.94), taxes and charges due thereon on account of the taxes levied and assessed upon said lands for the year 1876, and the usual certificate of sale was duly issued on account of said sale to said Douglas county; that thereafter the said certificate was duly sold and assigned to one Hiram Hayes by said Douglas county, and the said Hiram Hayes afterwards, on the first day of June, 1882, duly deposited the said certificate in the office of the county clerk of said Douglas county and applied for a tax deed thereon, the said premises then remaining wholly unredeemed from said tax sale, and that thereupon the county clerk of said county then and there executed, acknowledged, and delivered to the said Hiram Hayes a tax deed of said land in due form of law, in and by which the said county and State granted and conveyed to the said Hayes, his heirs and assigns, the said land and each
39 and every part thereof, which said deed was duly recorded in the office of the register of deeds of said Douglas county

on the second day of June, 1882, in Book 2 of Tax Deeds, on page 251; that at the time of the execution and recording of said tax deed the said lands so conveyed thereby were vacant and unoccupied and so remained continuously for the space of more than nine months thereafter and for more than three years thereafter, to wit, for more than seven years thereafter, and until these defendants took possession thereof under and by virtue of the tax deed hereinbefore mentioned and a deed of conveyance thereof from the said Hiram Hayes to one Edward Buchanan, dated on the second day of June, 1883, and under and by virtue of a deed from the said defendant, The Land and River Improvement Company, executed on the thirteenth day of June, 1883; and these defendants aver that the said Land & River Improvement Company is now, by virtue of the premises hereinbefore stated, the owner in fee thereof and had and has good right and lawful authority to hold and occupy said premises under and through its said tenant, the defendant Farley, or otherwise, and they submit and insist that all right to recover said premises or any portion thereof by the said plaintiff is barred by the statute of limitation in such cases made and pro-
40 vided, to wit, section 1188 of the Revised Statutes of Wisconsin.

Fourth. And for a further and separate defense these defendants show that one James D. Ray, the original owner of the lands described in the complaint, and all persons claiming under him and the said plaintiff did for the period of four years next preceeding the recording of the said tax deed dated September 5, 1870, mentioned in the second defense above pleaded, fail and neglect to pay the taxes levied and assessed against the said lands, and the said Hiram Hayes, the grantee in said deed, did for the period of three years pay and redeem all the taxes levied and assessed against the lands described in the complaint from and after the said date of the recording of such tax deed, to wit, from and after September 5, 1870, and the said James D. Ray and all persons claiming under him and said plaintiff did not, within nine months from and after the passage and publication of chapter 133 of the Laws of 1885 nor at any other time, commence this action or any other suit respecting said lands, and these defendants hereby plead the said chapter 133 of the Laws of Wisconsin for the year 1885 in bar to this action.

41 Fifth. And for a further and separate defense these defendants show that one James D. Ray, the original owner of the lands described in the complaint, and those claiming under him and the plaintiff, for the period of four years next preceding the recording of the said tax deed or instrument of conveyance dated June 1, 1882, mentioned in said third defense above pleaded, failed and neglected to pay the taxes and all the taxes levied and assessed against the lands, and that the grantee in such deed, the said Hiram Hayes, and those claiming under him, to wit, the defendants, The Land & River Improvement Company, for the period of three years paid or redeemed all the taxes levied and assessed against the said lands from and after the date of the recording of said tax deed

or instrument of conveyance, to wit, from and after the second day of June, 1882, and that the said original owner and those claiming under him and the said plaintiff did not, nor did either or any of them, commence any action for the recovery of said land, or any other action whatsoever in respect to the same, against the said Hiram Hayes *or the said Hiram Hayes* or the said Edward Buchanan or the defendant, The Land & River Improvement Company,
42 within nine months from and after the passage and publication of chapter 133 of the Laws of this State for the year 1885, to wit, from and after M'ch 28, 1885, and these defendants plead the said chapter 133 of the Laws of 1885 in bar of said action.

Wherefore the defendants pray that said complaint may be dismissed with costs.

PINNEY & SANBORN,
Def't's Attorneys, Madison, Dane Co., Wis.

F. W. DOWNER,
Of Counsel, West Superior, Wis.

For the Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY }
vs.
THOMAS BARDON. }

L. A. Doolittle, being duly sworn, says he is an attorney-at-law, residing in the city of Eau Claire, Eau Claire county, Wisconsin, and that on the 21st day of July, 1890, at the city of Eau Claire, Eau Claire county, Wisconsin, he served the notice, petition, & supplemental bill in the above-entitled suit, hereto attached, on the defendant's solicitor, W. F. Bailey, by leaving the same at the residence of said W. F. Bailey at No. 307 Niagara street with Matilda Ander-
43 son, a person of suitable age and discretion, this deponent having immediately theretofore called at the office of said W. F. Bailey at 320 South Barstow street, in the said city, in order to serve the same, and, such office not being then open so as to admit of such service, the affiant further says that the said service was made between the hours of 6 in the morning and 9 in the evening and at about six o'clock p. m.

L. A. DOOLITTLE.

Subscribed and sworn to before me this 22d day of July, 1890.

ED. H. HIBBARD,
Notary Public, Eau Claire Co., Wis.

Afterwards, to wit, on the 1st day of August, 1890, came the parties and file stipulation relating to the hearing of the motion to file proposed supplemental bill of complaint, as follows:

44 U. S. Circuit Court, West. Dist. of Wisconsin.

LAND AND RIVER IMPROVEMENT COMPANY)
vs.
THOMAS BARDON.)

Stipulated that the hearing of the motion to file a supplemental bill and for an injunction be continued on account of the absence of Judge Bunn, to August 11th, 1890, at 10 o'clock a. m., at the same place, or may be taken up, at the plaintiff's option, before the Hon. W. Q. Gresham, circuit judge, at his chambers, at Chicago, on the same day, Aug. 11th, at 11 a. m.

Dated July 28th, 1890.

PINNEY & SANBORN,
Compl't's Sol'rs.
W. F. BAILEY, *Def't's Sol.*

Afterwards, to wit, on the 2d day of August, 1890, in the June special term, 1890, of said court, in the record of the proceedings thereof, before the Hon. R. Bunn, judge, is the following entry:

Temporary Restraining Order.

45 Circuit Court of the United States for Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY)
vs.
THOMAS BARDON.)

On reading and filing the petition of the complainant and the proposed supplemental bill of said complainant attached to said petition, copies of which have been served upon the solicitor for the defendant, and the notice attached to said appers, dated July 19, 1890, and on motion of Pinney and Sanborn, solicitors for the complainant—

It is ordered that the said defendant, Thomas Bardon, his agents, counsel, solicitors, and attorneys, and each and all of them, be, and they are hereby, temporarily enjoined and restrained from the further prosecution of the suit of the said Thomas Bardon, defendant, against the complainant and one John Darley, commenced by said Thomas Bardon, in the circuit court of the State of Wisconsin for the county of Douglas, on or about the first day of July last, and from noticing the said case for trial or in any manner taking any proceeding whatever in said action until the return day of
46 this order and until the same shall be actually heard and decided and until the further order of the court.

Ordered, further, that the said defendant, Thomas Bardon, or his solicitor or counsel appear before this court at a term thereof to be held in the city of La Crosse, in said State, at the United States court-room, in said city, on the 16th day of September next, at the opening of court on said day or as soon thereafter as counsel can

be heard, and show cause, if any there be, why the complainant should not have leave to file said supplemental bill and why the injunction herein contained should not be continued pending this suit and why such other or further relief should not be granted as shall be just.

Ordered, further, that a copy of this order be served upon the said Thomas Bardon personally and upon his counsel, Silverthorn, Hurley, Ryan & Jones, and upon his solicitor, W. F. Bailey, as soon as may be hereafter.

Dated August 2, 1890.

By the court:

R. BUNN, *Judge.*

This order personally served upon counsel as directed, but the various affidavits of said service not here transcribed.

47 Afterwards, to wit, on the 16th day of September, 1890, in the June special term, A. D. 1890, of said court, in the record and proceedings thereof before the Hon. R. Bunn, judge, is the following stipulation and order of court thereon:

Stipulation & Order.

Circuit Court of the United States for the Western District of Wisconsin.

It is hereby stipulated and agreed that the temporary injunction granted herein on the second day of August last may be continued in force after the return day thereof, being the second day of September, 1890, pending this action, but that the defendant shall have the right at any time to move, on reasonable notice, to vacate the same upon any ground now or hereafter existing of law or fact, and that on the said 16th inst. an order to that effect substantially in the form hereto annexed may be entered herein.

Dated Sept. 6, 1890.

PINNEY & SANBORN, *Compl't's Sol'rs.*
SILVERTHORN, HURLEY, RYAN & JONES,
W. F. BAILEY, *Def't's Solicitors.*

48 Circuit Court of the United States for the Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY }
vs.
THOMAS BARDON. }

On reading and filing the stipulation hereto annexed to the effect that the temporary injunction granted herein on the 2d day of August last may be continued pending this suit, subject to the right of the defendant to dissolve or modify the same upon any ground now or hereafter existing of law or fact—

It is, on motion of Pinney & Sanborn, solicitors for the com-

plainant, ordered that the said complainant have leave to file its supplemental bill attached to the motion papers upon which the temporary injunction herein was granted, and that the said defendant be, and he is hereby, required to plead, answer, or demur to the said supplemental bill on or before the next rule day of this court; and it is further ordered that the temporary injunction be, and the same is hereby, continued in full force and effect, as therein ordered, and

49 that a writ of injunction do issue out of and under the seal of this court restraining the said defendant, Thomas Bardon, his attorneys, counsellors, solicitors, trustees, agents, and servants, and each and every of them, pending this action and until the further order of the court, from the prosecution of the ejectment suit of the said Thomas Bardon, defendant, against the complainant and one John Darley, commenced by the said Thomas Bardon in the circuit court of the State of Wisconsin for the county of Douglas on or about the first day of July last, and from in any manner bringing the same on for trial or in any manner moving the same or taking any proceeding whatever therein, subject to the right of said Thomas Bardon and his attorneys, counsel, and solicitors to move at any time on reasonable notice to dissolve or modify said injunction upon any ground now or hereafter existing of law or fact.

Dated Sept. 16, 1891.

By the court:

R. BUNN, *Judge.*

Afterwards, to wit, November 4, 1890, came the defendant, by his solicitors, and filed his answer to supplemental bill of complaint as follows:

50 Circuit Court of the United States for the Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY, Plaintiff,
vs.
THOMAS BARDON, Defendant.

The defendant, Thomas Bardon, saving and reserving to himself all and all manner of benefit and advantage of exception to the many insufficiencies in the complainant's sup-l*i*m*a*ntal bill of complaint, makes answer thereto as follows:

The defendant admits that the complainant exhibited its original bill of complaint herein, and that defendant appeared and put in an answer thereto, and that said original bill sets forth that the complainant is the owner in fee of the lands described in said sup-l*i*mental bill by virtue of certain tax deeds issued to Hiram Hayes and of the running of certain statutes of limitation and of the mesne conveyances whereby the plaintiff acquired the title of said Hiram Hayes, and that said original bill further sets forth that the defendant claims title to said lands through mesne conveyances from the Government of the United States and by the conveyance to him

of a certain tax title thereof issued to Thomas Kiley before the said tax deeds to Hiram Hayes, and that said original bill further sets forth that the said conveyances to the defendant and his claim of title to said lands operates as a cloud upon the plaintiff's title, and that the answer of the defendant controverts upon divers grounds and facts set forth therein the matters pleaded in said bill, and sets forth the title and ownership of the defendant in and to said land, all of which will more fully appear by said original bill of complaint and answer, reference to which is hereby made for greater certainty.

And this defendant further alleges that the prayer of said answer is that the defendant be hence dismissed and recover judgment against the plaintiff for his costs.

And this defendant admits that after a term probatory had been assigned for taking proofs in this cause and after a portion of the plaintiff's proofs had been taken therein he commenced an action of ejectment in the circuit court of Douglas county against the plaintiff's tenant for the recovery of said lands, and that copies of the pleadings therein are set forth in said sup-l*i*mental bill, but this defendant denies that said action was commenced for the purpose of ousting the jurisdiction of this honorable court or rendering nugatory any decree which it may pronounce herein, and, on the contrary, the defendant alleges that said action of ejectment was brought in good faith, and because the defendant was advised and believed (as he is still advised and believes) that said action of ejectment was and is necessary for the protection of this defendant's title to said land and for the recovery of the possession thereof.

And this defendant alleges that said action of ejectment is and always has been a full and adequate remedy for the plaintiff as well as for the defendant, whichever of them shall be adjudged to own said lands, and is his only proper remedy, and that upon the allegations of the bill herein this court has no jurisdiction to try and determine the question of title, but that the present action is not an adequate remedy for the defendant if he shall be adjudged to be the owner of said lan-s.

And the defendant, answering to that portion of the sup-l*i*mental bill of complaint which alleges or recites that the plaintiff has power to purchase and improve and sell lands, buildings,
51 and docks, both in the State of New Jersey and in the State of Wisconsin (which averments are not in the original bill of complaint herein), admits that the articles of incorporation executed by the incorporators of the plaintiff in the State of New Jersey, by which articles the plaintiff claims that it is organized under and in pursuance of the acts of the legislature of New Jersey, assumes to the plaintiff the said powers and the right of the plaintiff to exercise the same in the State of Wisconsin, and the defendant alleges that said articles of incorporation assume and claim the right to exercise said powers in the States of Wisconsin and Minnesota, but not in the State of New Jersey, except in the town of Shrewsbury, in said State, which is an inland town of less than five hun-

dred inhabitants, where there exists no business demand whatever for the exercise of said powers or any of them, and where the plaintiff has not, as defendant is informed and verily believes, ever exercised any of said powers of purchasing, selling, or improving lands, buildings, and docks.

Wherefore the defendant alleges that the assumption by the said incorporators of the right to exercise said powers in said town of Shrewsbury was not in good faith, but was and is a mere pretense that said corporation was lawfully organized in the State of New Jersey to do business in that State as well as elsewhere, whereas it was organized in New Jersey solely for the purpose of exercising its assumed powers outside of the State of New Jersey, and this defendant therefore denies the said allegations of the supplemental bill, and denies that the laws of New Jersey authorized or could authorize the organization of a corporation in said State, with the said powers, solely for the purpose of exercising them in another State.

And, for a further answer, this defendant denies each and every allegation of new matter in said supplemental bill contained and not hereinbefore admitted, denied, or otherwise answered.

Wherefore defendant prays that the supplemental bill be dismissed and that the defendant have such other relief as shall be proper in the premises, besides his costs and disbursements in this behalf.

THOMAS BARDON,
Defendant.
W. F. BAILEY,
Sol. for Defendant.

Afterwards, to wit, on the 27 day of December, 1890, came the complainant, by its counsel, and filed replication to answer to supplemental bill of complaint as follows:

52 Circuit Court of the United States, Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY, Complainant,
vs.
THOMAS BARDON, Defendant.

The replication of The Land & River Improvement Company, complainant, to the answer of Thomas Bardon to the amended bill of complaint, defendant.

This repliant, saving and reserving unto *him*self all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that *he* will aver and prove *his* said amended bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law

to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct,
53 and humbly prays as in and by *his* said bill *he* hath already prayed.

PINNEY & SANBORN,
Compl't's Sol'rs.

Testimony.

54 U. S. Circuit Court, Western District of Wisconsin.

THE LAND & RIVER IMPROVEMENT CO.
vs.
THOMAS BARDON.

It is hereby stipulated that one John Darley, tenant of the complainant of the lands in question in this cause, would, if called and sworn as a witness for complainant, testify that he is now in possession and actual occupation of the S. E. ¼ of section 28, town. 49, range 49 west, as tenant of the complainant, and that he has been in such possession since the filing of the bill in this cause.

This stipulation shall have the same effect as if said Darley had been called as a witness and had so testified.

Dated July 28, 1890.

PINNEY & SANBORN,
Compl't's Sol'rs.
W. F. BAILEY, *Def't's Sol'r.*

55 Circuit Court *for* the United States for the Western District of Wisconsin.

LAND & RIVER IMPROVEMENT COMPANY, Complainant,
vs.
JAMES BARDON, Defendant.

Testimony of D. George Morrison, Taken in Above Cause on Behalf of the Complainant February 28th, 1891.

D. GEORGE MORRISON, being duly sworn, testified as follows:

Direct examination by Mr. SANBORN:

Q. You were examined in this case before about the copy of this record?

A. Yes.

Q. You live in Superior?

A. Yes, sir.

Q. You were register of deeds for Douglas county for a long time?

A. I was, sir.

Q. From what year?

A. I was first elected in 1865 and run more or less until 1888.

Q. Were you register of deeds in September, 1870?

A. I was, sir.

Q. What book is this, Mr. Morrison?

A. I believe this is the grantor index of our second indexes.

Q. General index?

A. Yes.

Q. Is it the reception book?

A. We had no reception book.

Q. Has this been rebound recently?

A. It seems so; yes.

Q. Within how long?

A. I couldn't say when it was rebound, but I copied that index, I think, in 1866.

Q. Now, will you look at the entry of the tax deed September 5th, 1870, to Col. Hiram Hayes and state when you actually spread that deed upon the record, copied it out on the record in the
56 book, vol. I, of tax deeds?

A. Probably within the same week; very sure within six days, anyway.

Q. Why are you able to say you did that within that time?

A. Because I never let anything go over, as a general thing, more than three or four days. I state six, because it might have run over two or three days, but I generally recorded papers within one or two days after they were filed. We didn't have much to do in those days, and they were spread on the record within two or three days, anyway.

Q. Referring now to Defendant's Exhibit A, being a copy of the tax deed of 1870, except the acknowledgment which is on another exhibit, is that your writing?

A. This is my writing, sir.

Q. Mr. Morrison, had volume two of tax deeds been obtained and opened at the time this tax deed was indexed or recorded, September 5, 1870?

A. I believe not, sir.

Q. Was there anything mentioned in the index of volume two of tax deeds?

Objected to as incompetent.

A. No, sir, I believe not up to this date.

Q. When was volume two of tax deeds commenced, to the best of your remembrance?

Objected to as incompetent.

A. About 1872, I think; somewheres near there.

Mr. PINNEY: This book that has been shown you in the court here now is the original book that was kept in the office?

A. Yes, sir; it is the original record, not a copy.

That is all.

Taken in open court at the hearing this 28th day of February, 1891.

R. BUNN,
District Judge.

57 United States Circuit Court for the Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY, Plaintiff,
vs.
THOMAS BARDON, Defendant.

It is stipulated that the testimony in this case, taken before I. W. Gates, United States court commissioner and one of the examiners of this court, may be taken in short-hand by H. J. Smith, and upon being written out and read over to the witness or witnesses and signed by them and certified by the commissioner shall be regarded as the testimony in the case with the same effect as if reduced to writing by the commissioner himself.

Complainant offers in evidence the original tax deed to Hiram Hayes, dated September 5th, 1870, with the certificate of recording endorsed upon the deed, hereunto annexed and marked "Exhibit A."

Defendant objects to "Exhibit A," first, for the reason that it is incompetent as evidence of title; second, because the certificate of acknowledgment is insufficient; third, because the deed is void upon its face. The defendant further objects to the endorsement of record on the back as insufficient evidence of the recording of the deed.

The complainant further offers in evidence the original tax deed to Hiram Hayes, dated June 1st, 1882, recorded June 2nd, 1882, Book "2" of Tax Deeds, page 251, together with the certificates of recording endorsed thereon, marked "Exhibit B."

Defendant objects to "Exhibit B" for the reason that the same is void upon its face. Defendant also objects to the certificates of acknowledgment as insufficient, and to the memorandums of record endorsed as insufficient evidence of the recording of the deed.

Col. HIRAM HAYES sworn:

Q. You live in Superior, and have for how long?

A. Well, I have lived here all the time since 1881, and a part of the time some years previous.

Q. You are the grantee named in these tax deeds?

A. Yes, sir.

Q. Do you know the S. E. ¼ section 28, 49, 14, mentioned in these deeds?

Ans. Yes, sir.

Q. Are you acquainted with the value of the land in Douglas county?

A. I have, I think, considerable acquaintance with values.

Q. Have you bought and sold lands for the last ten years here?

A. Yes; now and then.

Q. Do you know the value of this land in question?

A. Yes; I should say from three to five hundred dollars per acre.

Q. The first tax deed was founded upon the tax levy of 1866. Will you state who paid the taxes on this land levied in the year 1867, giving any papers or documents relating to the payment which you have? State in your own way.

A. I paid the tax on this land for the year 1867.
Q. Give the date.
A. On July 20th, 1868, to the county treasurer.
Q. Have you the certificate of payment?
A. I have the county treasurer's receipt. The amount paid was $12.60 on this quarter.

Complainant offers in evidence county treasurer's receipt,
58 dated July 20th, 1868, hereto annexed, marked "Exhibit C."
Objected to by defendant as incompetent, irrelevent, and immaterial.

Q. State whether or not you paid the taxes on this quarter in 1868.
A. I paid the taxes on this quarter in 1868.
Q. Date and amount.
A. On the 27th of May, 1869; to the county treasurer, $20.77 and interest.

Complainant offers in evidence county treasurer's receipt, dated May 27th, 1869, hereto annexed, marked "Exhibit D."
Objected to by defendant as incompetent, irrelevent, and immaterial.

Q. State whether or not you paid the taxes of 1869 upon this quarter section.
A. Yes, sir; by redeeming from the tax sale of the same land for that year. (Defendant interposes an objection to any evidence of redemption.) On the 18th day of March, 1872, paying $35.00.

Complainant offers in evidence redemption certificate of the county treasurer, number 70 A, dated March 18th, 1872, hereto annexed, marked "Exhibit E."
Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. State whether you paid the taxes of 1870; and, if so, when and how much.
A. Yes, sir; I paid the taxes on the land for 1870 on or about the 1st day of August, 1871, to the county treasurer, $18.14 and interest.
Q. I call your attention to the county treasurer's receipt blank, dated July 31st, 1871, and ask in whose hand it is if you know who made it.
A. In Thompson Ritchie's hand, county treasurer at the time, and he made it.
Q. State whether he delivered it to you.
A. Yes, sir.
—. Did he deliver it to you at or about the time it bears date?
A. I believe he did.
Q. And at or about the time you paid the taxes?
A. Yes, sir.

We offer the certificate in evidence, marked "Exhibit F."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. State whether or not you paid the taxes of 1871 on this land; and, if so, when and to what amount.

A. I paid for the year 1871 on this land to the county treasurer on September 2nd, 1872, $21.71 and interest.

Complainant offers in evidence county treasurer's receipt, dated September 2nd, 1872, hereto annexed, marked "Exhibit G."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. State whether or not you paid the taxes of 1872; and, if so, when and to what amount.

A. Yes; I paid the taxes for 1872 on the 11th day of May, 1874, to the county treasurer, $28.98 and interest.

Q. Can you tell how it happened that that payment was made in 1874 instead of 1873?

Objected to be defendant as incompetent, irrelevant, and immaterial.

A. I can't say why at this time.

Complainant offers in evidence county treasurer's receipt, numbered 215, dated May 11th, 1874, hereto annexed, marked "Exhibit H."

Objected to be defendant as incompetent, irrelevant, and immaterial.

Q. State whether or not you paid the taxes of 1873; and, if so, when and for what amount.

59 A. Yes; I paid the taxes of 1873 on December 31st, 1873, to the town treasurer, $18.40.

Complainant offers in evidence town treasurer's receipt number 26 B, dated December 31st, 1873, hereto annexed, marked "Exhibit I."

Q. State whether or not you paid the taxes of 1874 on this quarter section. State fully what you did in respect to such taxes.

A. For the year 1874 the taxes were delinquent on this land and the same went to sale on the 11th of May, 1875, and was sold to Douglas county.

Objected to by defendant as incompetent, irrelevant, and immaterial.

On April 7th, 1876, the certificate for this land was assigned to L. F. Wheelock (objected to) by the county clerk, and on the 24th of May, 1876, such certificate was assigned by Wheelock (objected to) to Mary E. Hayes.

Q. State who paid Wheelock for the assignment to Mary E. Hayes.

A. I did.

Q. How much money did you pay him?

A. Well, I paid the amount of the certificate—I mean so much of the certificate as embraced that piece. I paid the amount for which that piece was sold and probably interest. I don't know as to that.

Q. Whose money was it—your own or that of Mary E. Hayes?

A. It was my own money, she being my wife.

Complainant offers in evidence the copy of certificate of sale, numbered 490, dated May 11th, 1875, in connection with the assignment on the back of such certificate, dated April 7th, 1876, and in order to identify the assignment.

(Defendant objects to all that as incompetent, irrelevant, and immaterial, and to the assignment as incompetent, irrelevant, and immaterial.)

Copy of certificate and assignment hereto annexed and marked "Exhibit J." Complainant further offers the assignment of said certificate, dated May 24th, 1876, by Wheelock to Mary E. Hayes, hereto annexed, marked "Exhibit K."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. State whether Leonard F. Wheelock is now dead.

A. Yes, sir.

Q. State whether or not you paid the taxes on this quarter section for 1875; and if so, when and for what amount.

A. Yes; I paid for 1875 tax of $9.60 on this land to the town treasurer February 17th, 1876.

Complainant offers in evidence town treasurer's receipt number 101 B, dated February 17th, 1876, hereto annexed, marked "Exhibit L."

Objected to as incompetent, irrelevant, and immaterial.

Q. For the year 1876 were the taxes paid on this land or was that the tax upon which this second deed was taken?

A. The taxes were not paid on this land in 1876, and that is the tax for which the second deed was taken.

Q. Now go to the year 1877. State whether or not you paid or redeemed the taxes of 1877; and if so, when and for what amount.

A. I did not pay the taxes for the year 1877. The land was sold therefor May 14th, 1878, and the sale was redeemed July 14th, 1885.

Defendant objects to this evidence of the sale of redemption as incompetent, irrelevant, and immaterial.

Q. Who paid the redemption money?

A. Land and River Improvement Co.

Complainant offers in evidence certificate of sale No. 412, dated May 14th, 1878, hereto annexed, marked "Exhibit M."

60 Objected to by defendant as incompetent, irrelevant, and immaterial.

Complainant further offers in evidence the assignment of "Exhibit M" to Hiram Hayes, dated August 30th, 1878, hereto annexed, marked "Exhibit N."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. Who paid the money for the assignment from the county to you?

A. I did myself.

Q. Can you tell how much?

A. The amount of the face of the certificate.

Q. State, if you know, who paid the tax of 1878 upon this land, and when and how much.

A. The taxes were not paid for 1878, but this land went to sale therefor May 13th, 1879, and on the 7th of January, 1880, I redeemed the land for $6.66.

Q. You paid the money yourself?

A. Yes, sir.

Complainant offers in evidence redemption receipt No. 24, dated January 7th, 1880, hereto annexed, marked "Exhibit O."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. State who paid or redeemed the taxes of 1879, and when and for what amount.

A. The land was sold May 11th, 1880, for delinquent taxes on this land of 1879, and on October 6th, 1880, I redeemed from said sale by paying $10.69.

Q. You did this yourself, Col.?

A. Yes, sir.

The complainant offers in evidence redemption receipt No. 77, dated October 6th, 1880, hereto annexed, marked "Exhibit P."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. State who paid or redeemed the taxes on this land for 1880 and the amount and date.

A. I paid the taxes on said land for the year 1880 to the county treasurer on the 15th day of May, 1881, $15.16 and interest.

Complainant offers in evidence county treasurer's receipt No. 15 A, dated May 15th, 1881, hereto annexed, marked "Exhibit Q."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. You cannot state whether you paid the taxes of 1881?

A. I cannot at this time.

Q. Did you pay or redeem the taxes of 1882; and, if so, when and what amount did you pay?

A. Yes, sir; I paid the taxes for 1882 to the county treasurer on the 10th of May, 1883, $21.59.

Complainant offers in evidence county treasurer's receipt No. 35 A, dated May 10th, 1883, hereto annexed and marked "Exhibit R."

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. Now, Colonel, will you state with what intent and for what purpose you took the second tax deed of 1882? You already had a tax deed of 1870 covering the same land. Why did you take a second tax deed on the tax of 1876?

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

A. I took that tax deed in order to strengthen my title.

Q. Did you have any other purpose or intent in so taking it?

A. Well, as far as I now recall that was the purpose and intent.

HIRAM HAYES.

61 CHARLES LARGO, county clerk, sworn:

Q. Are you the county clerk of Douglas county?

A. Yes, sir.

—. And have you the custody of the tax records of Douglas county?

A. All except the assessment-roll.

(Objected to by defendant.)

Q. Have you the custody of the delinquent rolls and sales books?

(Objected to by defendant.)

A. Yes, sir.

Q. Will you produce delinquent tax roll for 1867?

(Defendant objects to the competency of the witness.)

A. Yes, sir.

Complainant offers in evidence the entry on page 41 as follows: "Delinquent list of taxes in Douglas county for 1867: S. E. sec. 28, town. 49, range 14; acres, 160; amount of tax, $12.60; paid by H. Hayes July 20."

(Objected to by defendant.)

Q. Will you produce delinquent roll for 1868?

(Defendant objects to the competency of the witness.)

A. Yes, sir.

Complainant offers in evidence the following entry on page 123 of said delinquent roll:

"Delinquent list of taxes in Douglas county for 1868: Name of person taxed, H. Hayes; description, S. E. section 28, town. 49, R. 14; acres, 160; amount of tax, $20.77; payable May 27th, 1869; H. Hayes."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

Q. Will you produce the sales book for 1871?

A. Yes, sir; that is the one.

(Objected to by defendant.)

Complainant offers in evidence entry on pages 296 and 297 of said sales book as follows:

"Number of certificate, 181; to whom assessed, H. Hayes; description of lots sold, S.E. qr. sec. 28, T. 49, R. 14; amount, $28.85; by whom redeemed, H. Hayes; amount, $17.58; year, 1872; month, March; day, 18."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

Q. Will you produce delinquent roll for 1870?

(Defendant objects to the competency of witness.)

A. Yes, sir.

Complainant offers in evidence the entry on page 2, in that part of the book which contains the entry of lands described by Government survey, of such delinquent roll as follows:

"Delinquent list of taxes in Douglas county for 1870: Name of person taxed, H. Hayes; description, S. E. quarter sec. 28, town. 49, range, 14; acres, 160; amount of tax, $17.28; fees, .86; total, $18.14; remarks, paid July 31st, 1871; H. Hayes."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

Q. Will you produce the delinquent tax roll of 1871?

(Defendant objects to competency of witness.)

A. Yes, sir.

Complainant offers the following entrys on page 4 of said roll:

"Delinquent list of taxes in Douglas county for 1871: Name of person taxed, H. Hayes; description, S. E. qr. sec. 28, town. 49, range, 14; acres, 160; amount of tax, 20.68; fees, 1.03; total, 21.71; paid September 2, 1872."

62 (Objected to by defendant as incompetent, irrelevant, and immaterial.)

Q. Will you produce the delinquent roll for 1872?

(Defendant objects to the competency of the witness.)

A. Yes.

Complainant offers in evidence the following entries on page 3 of said roll:

"Name of person taxed, H. Hayes; description, S. E. quarter sec. 28, town. 49, range 14; acres, 160; amount of tax, $27.60; fees, 1.38; total, $28.98; when and by whom paid, May 11th, 1874; H. Hayes."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

Q. Have you also as county clerk custody of the tax rolls for Douglas county?

A. Yes, sir.

Q. Will you produce the tax roll of the town of Superior for 1873?

A. Yes, sir.

Complainant offers in evidence the following entry on page 382 of said tax roll as follows:

"Tax, town of Superior, 1873, town. 49, range 14: Owner, Hiram Hayes; description, S. E. quarter sec. 28, town. 49, range 14; acres, 160; valuation, 800; total amount of tax, 18.40; when and by whom paid, paid by H. Hayes December 31, 1873."

(The defendant objects to the competency of the witness and to the book and entry as incompetent, irrelevant, and immaterial.)

Q. Will you produce the tax-sales book of 1875?

(Defendant objects to the witness as incompetent.)

A. Yes.

The complainant offers the following entry on page 64 of said sales book:

"Record of statement of lands sold at tax sale of May 11th, 1875: Number of certificate, 490; to whom assessed, Hayes, H.; description, town. 49, range 14, S. E. ¼ sec. 28; amount, $14.69; to whom sold, assigned, L. F. Wheelock, April 7th, 1876."

(Defendant objects to the book and entry as incompetent, irrelevant, and immaterial.)

Q. Will you produce the tax roll for the town of Superior for the year 1875?

(Defendant objects to the witness as incompetent.)

A. Yes, sir.

Complainant offers the following entry on page 443 of said tax roll:

"Tax roll for the town of Superior, county of Douglas, for the year 1875, town. 49, range 14: Owner, H. Hayes; description, S. E. ¼ sec. 28, town. 49, range 14; acres, 160; valuation, 240; total amount of tax, 9.60; when & by whom paid, H. Hayes; month, 2; day, 17; year, '76."

(Defendant objects to the book and entry as incompetent and irrelevant.)

Q. Will you produce the tax-sales book for the year 1877?

A. Yes, sir.

Complainant offers the following entry in said sales book on page 205:

"Record of statement of lands sold at tax sales May 8th, 1877: Number of certificate, 325; to whom assessed, Hiram Hayes; description, S. E. ¼ sec. 28, town. 49, range 14; acres, 160; amount, $8.89; to whom deeded, Hiram Hayes; year, 1882; month, June; day, 1."

(Defendant objects to the book and the entry as incompetent, irrelevant, and immaterial.)

Q. Will you produce the tax-sales book for 1878?

A. Yes, sir.

63 The complainant offers in evidence the following entries on page 303 of said book:

"Number of certificate, 412; to whom assessed, H. Hayes; description, S. E. ¼ sec. 28, town. 49, range 14; acres, 160; amount, $11.30; by whom redeemed, Land and River Improvement Co.; amount, 31.75; year, 1885; month, July; day, 14; receipt of amount, received this, H. Hayes."

(Defendant objects to the book and the entry as incompetent, irrelevant, and immaterial.)

Q. Will you produce the sales book of 1879?
A. Yes, sir.

Complainant offers the following entry on page 61 of said sales book:

"Record of statement of lands sold at tax sale of May 13th, 1879: Number of certificate, 434; to whom assessed, H. Hayes; description, southeast q'r sec. 28, T. 49, R. 14; acres, 160; amount, 6.55; to whom sold, Douglas county; by whom redeemed, Hiram Hayes; amount, $18.71; year, 1880; month, January; day, 7."

(Defendant objects to the book and the entry as incompetent, irrelevant, and immaterial.)

Q. Will you produce the tax-sales book of said town for 1880?
A. Yes, sir.

Complainant offers in evidence the following entries on page 138 of said sales:

"Record of statement of lands sold at tax sale of May 11, 1880: Number of certificate, 400; to whom assessed, Hayes, H.; description, southeast q'r sec. 28, T. 49, R. 14; acres, 160; amount, $10.65; to whom sold, Douglas county; by whom redeemed, Hiram Hayes; amount, 27.53; year, 1880; month, October; day, 6th."

(Defendant objects to the book and the entry as incompetent, irrelevant, and immaterial.)

Q. Will you produce the delinquent tax roll of the town of Superior for 1880?
A. Yes, sir.

(Defendant objects to the competency of the witness.)

Complainant offers the following entry on page 301 of said roll:

"Delinquent tax roll for the town of Superior, county Douglas, for the year 1880: Owner, H. Hayes; description, S. E. ¼, section 28, town. 49, range 14; acres, 160; State, county, and town tax, 14.43; school tax, .73; total amount of tax, 15.16; when and by whom paid, H. Hayes; date of payment, month, 5; day, 15; year, '81."

(The defendant objects to the book and entry as incompetent, irrelevant, and immaterial.)

Q. Will you produce the tax-sales book of said county for 1882?
A. Yes, sir.

Complainant offers in evidence the following entries on page 223 of said book:

"Record of statement of lands sold at tax sale of May 16th, 1882: No. of certificate, 162; to whom assessed, Hiram Hayes; description, southeast q'r sec. 28, town. 49, range 14; acres, 160; amount, $31.69; to whom sold, H. Hayes; by whom redeemed, Land and River Improvement Co.; amount, $56.83; year, 1885; month, July; day, 14; receipt of amount, received this, H. Hayes."

(Defendant objects to the book and entry as incompetent and irrelevant.)

Q. Will you produce the delinquent return for 1881?

64 (Defendant objects to the competence of this witness.)

A. Yes, sir.

Complainant offers in evidence the following entry in said book: "Delinquent tax roll for the town of Superior, county of Douglas, for the year 1881: Owner, H. Hayes; description, S. E. ¼ sec. 28, town. 49, range 14; acres, 160; valuation, blank; State, school, & county & town. tax, 28.80; school tax, 1.14; total amount of tax, 30.24; when and by whom paid, sold (in red ink)."

(Defendant objects to the book and entry as incompetent and irrelevant.)

Q. Will you produce the delinquent tax roll of the town of Superior for the year 1882?

(Defendant objects to the witness as incompetent.)

A. Yes, sir.

Complainant offers in evidence the following entries in said book: "Delinquent tax roll for the town of Superior, county of Douglas, for the year 1882: Owner, Hiram Hayes; description, S. E. ¼ section 28, town. 49, range 14; acres, 160; valuation, blank; total amount of tax, 21.59; number of receipt, 35 A; when and by whom paid, H. Hayes; date of payment, month, 5; day, 10; year, '83."

(Defendant objects to the book and entry as incompetent and irrelevant.)

Complainant offers in evidence tax receipt No. 388 C, dated January 29, 1884, hereto annexed and marked "Exhibit S."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

The complainant further offers in evidence tax receipt number 14 A, dated December 30th, 1884, hereto annexed, marked "Exhibit T."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

The complainant further offers in evidence tax receipt number 31 A, dated January 9, 1886, hereto annexed, marked "Exhibit U."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

The complainant further offers in evidence tax receipt number 63 A, dated January 10th, 1887, hereto annexed, marked "Exhibit V."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

Complainant further offers in evidence tax receipt number A 36, dated January 10, 1888, hereto annexed, marked "Exhibit W."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

Complainant further offers in evidence tax receipt dated January 4, 1889, hereto annexed, marked "Exhibit X."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

Complainant further offers in evidence tax receipt dated January 10, 1890, hereto annexed, and marked "Exhibit Y."

(Objected to by defendant as incompetent, irrelevant, and immaterial.)

CHARLES LAGRO.

65 *Stipulation.*

It is agreed between counsel that instead of attaching the original tax receipts copies may be attached; which copies shall contain only the lands involved in this action, the originals containing a large amount of other lands.

EDWARD DUNDON sworn:

Q. Do you live here?

A. Yes, sir.

Q. What is your business?

A. I take charge of the outside work for the Land and River Improvement Company.

Q. How long have you been working for them?

A. Well, I have been in their employ since three years ago this fall.

Q. Do you know the S. E. ¼ of 28, 49, 14?

A. Yes, sir.

Q. Some time last October did you go out there and put up a house on that?

A. Yes, sir.

Q. State whether you were directed to do so by anybody.

A. Yes; I was.

Q. By whom were you so directed?

A. Mr. Downer, the company's attorney, and also Mr. Wemyss, the manager of the Land and River Improvement Company.

Q. About when did you put up the house?

A. Somewhere between the 3rd and the 10th of October, 1889.

Q. When you went out there was the land already fenced?

A. Yes, sir.

Q. Do you know by whom it was fenced?

A. By the Land and River Improvement Company.

Q. What sort of a fence?

A. A wire fence—posts. I will say to you that Mr. Thomas was with me at the time. We located the ground.

Q. Is there any one living in the house that you put up?
A. Yes, sir.
Q. Who is it?
A. John Darley.
Q. Has he a family?
A. Yes; got a wife.
Q. Does she live there with him?
A. Yes, sir.
Q. How long after you put up this house did Darley move in?
A. He moved in himself that night of the day on which we started the house, and his wife moved in within a day or two.
Q. For whom is Darley acting or working?
A. For the Land and River Improvement Company.
Q. State whether or not you put that house up there the same day you were directed to do so by Mr. Donner.
A. Yes, sir; and by Mr. Wemyss as well.

E. DUNDON.

66 F. W. DOWNER sworn:

Q. You live in Superior?
A. Yes.
Q. And you are the attorney of the Land and River Improvement Co.?
A. Yes.
Q. Did you, as such attorney, give direction to Mr. Dundon in regard to putting up the house on the S. E. ¼ of 28, 49, 14?
A. Yes; I did.
Q. When?
A. On the morning of the 13th day of October. By evening he reported to me that the house was up and the man in it.
Q. Did you arrange with Mr. Darley about going in?
A. No; Mr. Dundon put him in afterwards.
Q. For whom is Mr. Darley acting or whose agent is he?
A. The Land and River Improvement Company.
Q. What instructions, if any, have been given to Mr. Darley in regard to keeping possession?
A. He is instructed to keep possession for this company against everybody, and he is is now in possession.

F. W. DOWNER.

EDWARD DUNDON recalled.

Cross-examinasion:

Q. You say it was fenced when you built the house?
A. Yes, sir.
Q. Was there any openings in that fence?
A. Yes, sir; I think there was. There was an opening in the fence to let teams pass on each side—one on the east side and one on the west.

Redirect:

Q. Do you know when this fence was first put up?
A. No; I don't.
Q. Do you know how long it was up?
A. No.

E. DUNDON.

67 EXHIBIT "A."

To all to whom these presents shall come, Greeting:

Whereas Hiram Hayes, of Douglas county, Wisconsin, has deposited in the office of the clerk of the county board of supervisors of the county of Douglas, in the State of Wisconsin, a certain certificate of the treasurer of said county, whereby it appears, as the fact is, that the following-described piece or pieces or parcel or parcels of land, lying and being situate in the county of Douglas, State of Wisconsin, to wit:

Description.	Section.	Town.	Range.	No. of acres.	Total amount.
Southeast quarter of..	28	49	14	160	$14 23

was or were for the non-payment of taxes sold by the treasurer of said county at public auction, at his office, in the town of Superior, in the county of Douglas, on the third day of September, in the year of our Lord one thousand eight hundred and sixty-seven, to the said Hiram Hayes for the sum of fourteen dollars and twenty-three cents in the whole, which sum was the amount of taxes assessed and due and unpaid on said tract or several tracts of land, together with the costs and charges of such sale due therewith at the time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser or purchasers;

And whereas it further appears, as the fact is, that the owner or owners or claimant or claimants of said lands has or have not redeemed from said sale the lands which were sold as aforesaid, and said lands are now unredeemed from such sale, whereby said described lands have become forfeited and the said purchaser, his or her or their heirs or assigns, is or are entitled to a deed of conveyance thereof:

Now, therefore, know all men by these presents that the
68 county of Douglas, in said State, and the State of Wisconsin, in consideration of said money aforesaid and the premises and in conformity to law, hath and hereby doth give, grant, and convey the tract or several tracts of land above described, together with the hereditaments and appurtenances, to the said Hiram Hayes and to his or her and their heirs and assigns to their sole use and benefit forever.

In testimony whereof I, Richard Relf, the clerk of the board of supervisors of the county of Douglas, State of Wisconsin, have executed this deed pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin and for
[SEAL.] and on behalf of the said State and of the county of Douglas aforesaid, and have hereunto subscribed my name offi-

cially and affixed the seal of the board of supervisors, at Superior, in *in* said county of Douglas, this fifth day of September, in the year of our Lord one thousand eight hundred and seven*h*.

RICH. RELF, [SEAL.]
Clerk of the County Board of Supervisors of the County of Douglas, State of Wisconsin,
By D. C. RELF, *Deputy.* [SEAL.]

Done in presence of—

E. C. BECKER.
THOS. CLARK.

STATE OF WISCONSIN, } ss:
County of Douglas, }

Be it remembered that on the fifth day of September, A. D. 1870, before the undersigned, a justice of the peace in and for said county, personally appeared D. C. Relf, deputy clerk aforesaid, and acknowledged that he had executed the above deed as clerk of the board of supervisors of the county of Douglas, State of Wis-
69 consin, for and on behalf of said county and State, for the purposes therein mentioned.

THOS. CLARK,
[L. S.] *Jus. Peace, Douglas County, Wisconsin.*

[Endorsed:] State of Wisconsin and Douglas county to Hiram Hayes. Tax deed. Register's office, Douglas county, Wisconsin. Recorded September 7th, 1870, at 3 o'clock p. m., in Liber 1 of Tax Deeds, on pages 378, 379. D. Geo. Morrison, register, per Jas. S. Ritchie, deputy. (Seal.)

70 EXHIBIT "B."

To all to whom these presents shall come, Greeting:

Whereas Hiram Hayes, assignee, of Douglas county, has deposited in the office of the county clerk of the county of Douglas, in the State of Wisconsin, a certificate of the treasurer of said county, whereby it appears, as the fact is, that the following-described pieces or parcels of land, lying and being situate in the county of Douglas, State of Wisconsin, to wit:

No. of certf.		Section.	Town.	Range.	Acres.	Total amount.
In 325.	Undivided one-eighth of lots two (2), three (3), & four (4).	10	49	14	17.71	$4 37
"	Southeast quarter of southwest quarter.....	15	49	14	40	4 61
"	Northwest quarter of southeast quarter....	21	49	14	40	2 96
"	West half of northeast quarter of southeast quarter..	21	49	14	20	1 65
"	Southeast quarter	28	49	14	160	8 94
"	Undivided quarter of lots three (3), four (4), and five (5)	29	49	14	29.01	2 34
"	East half of southeast of southwest of northwest quarter	34	49	14	5	60
"	Southeast quarter	12	48	15	160	6 59
"	Undivided half of north half of northeast quarter	13	48	14	40	2 13
"	Southwest quarter of northwest quarter.....	3	48	13	40	2 10
"	Southeast quarter of southwest quarter.....	6	48	13	40	2 10
"	West half of northeast of northeast quarter.....	9	48	13	20	94
"	Southwest quarter of northeast quarter	12	48	13	40	1 58
71						
"	North half of northwest quarter	1	47	13	74.50	1 87
"	South half of northwest quarter	1	47	13	74.50	1 87

were for the non-payment of taxes sold by the treasurer of said county at public auction, at his office, in the town of Superior, in the county of Douglas, on the eight day of May, in the year of our Lord one thousand eight hundred and seventy-seven, to the said Douglas county for the sum of forty-four dollars and sixty-five cents in the whole, which sum was the amount of taxes assessed and due and unpaid on said parcels of land, together with the costs and charges of such sale due therewith at the time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser;

And whereas it further appears, as the fact is, that the owners or claimants of said lands have not redeemed from said sale the lands

which were sold as aforesaid, and said lands are now unredeemed from such sale, whereby said described lands have become forfeited and the said purchaser, his heirs or assigns, are entitled to a deed of conveyance thereof:

Now, therefore, know all men by these presents that the county of Douglas, in said State, and the State of Wisconsin, in consideration of said money aforesaid and the premises and in conformity to law, hath and hereby doth give, grant, and convey the parcels of land above described, together with the hereditaments and appurtenances, to the said Hiram Hayes and to his heirs and assigns to their sole use and benefit forever.

In testimony whereof I, George F. Holcomb, the county clerk of the county of Douglas, State of Wisconsin, have executed
72 this deed pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin and for and on behalf of the said State and of the county of Douglas aforesaid, and have hereunto subscribed my name officially and
[SEAL.] affixed the seal of the board of supervisors, at Superior, in said county of Douglas, this first day of June, in the year of our Lord one thousand eight hundred and eight-two.

GEORGE F. HOLCOMB, [SEAL.]
County Clerk of the County of Douglas, State of Wisconsin.

Done in presence of—

W. CRANWELL.
D. GEO. MORRISON.

STATE OF WISCONSIN, }
County of Douglas, } ss:

Personally came before me, this first day of June, A. D. 1882, the within-named George F. Holcomb, county clerk of the county of Douglas, in the State of Wisconsin, to me known to be the person who executed the foregoing and within instrument, and acknowledged the same.

D. GEO. MORRISON,
[L. S.] *Notary Public, Douglas Co., Wis.*

[Endorsed:] No. 11679. State of Wisconsin and Douglas county to Hiram Hayes. Tax deed. Register's office, Douglas county, Wisconsin. Recorded June 2nd, A. D. 1882, at 10 o'clock a. m., in Liber Two of Tax Deeds, on page 251. D. Geo. Morrison, register. (Seal.)

73 Exhibits A & B are tax deeds appended only to original, as per direction of Mr. Sanborn.

EXHIBIT C.

COUNTY TREASURER'S OFFICE,
SUPERIOR, WISCONSIN, *July* 20, 1868.

STATE OF WISCONSIN, }
County of Douglas. }

Received from Hiram Hayes fifty-four and $\frac{5}{100}$ dollars in full for taxes, interest, and charges on the following-described property, in the town of Superior, Douglas county, State of Wisconsin, for the year 1867, as returned to this office by the treasurer of the town of Superior, in said county:

N ½ of s w of n w of sec.	34,	town.	49,	range	14.....	$1 26
40 acres off e side	" 23,	"	"	"	"	15 12
Und. ½ of n ½ of s e	" 29,	"	"	"	"	2 52
Und. ½ of s e of s w	" 6,	"	48,	"	13.....	1 21
Und. ½ of s w of s w	" "	"	"	"	"	95
S e ¼	" 28,	"	49,	"	14.....	12 60
E ½ of n e	" 27,	"	48,	"	13.....	3 15
West 4th St., lot 354					.....	2 52
" 356					.....	2 52
" 358					.....	2 52
" 7					.....	1 89
" 5th " " 303					.....	4 73
						50 99
Interest, 6 mos.					.....	3 06
						$54 05

I. W. GATES,
County Treasurer.

74 EXHIBIT D.

$26.24. County treasurer's office, Superior, Douglas county, Wisconsin.

Received of Hiram Hayes this 27th day of May, 1869, the sum of twenty-six & $\frac{24}{100}$ dollars in full for taxes, interest, and charges for the year 1868 on the following-described real estate, in the town of Superior, Douglas county, State of Wisconsin, as returned to this office by the treasurer of the town of Superior, in said county:

Street.	Lots.	Total tax.
West 1st	" 185	98
" 2d	" 59	1 62
" 4th	" 354, 356	1 62
Southeast ¼ of sec. 28, T. 49, R. 14, acres 160		20 77
		$24 99
Interest from January 1st, 1869		1 25
		$26 24

E. C. BECKER,
County Treasurer.

(Signed in duplicate.)

75 EXHIBIT E.

$62.61. Sale of May, 1871; certificate No. 108,181. No. 70 A.

Supervisor's office, Douglas Co., Wis.

SUPERIOR, *March 18th*, 1872.

Received from H. Hayes sixty-two $\frac{61}{100}$ dollars in full, the redemption of the following-described tracts of land, lying in the county of Douglas, from the sale for taxes, costs, and charges of sale, together with the interest accruing thereon, at the rate of 25 per cent. per annum, said tracts having been sold on the first day of May, A. D. 1871, for taxes due the county thereon for the year 1869 and the delinquent road taxes for the year —:

Description.	Section.	Town.	Range.	Acres.	Principal.	Interest.	Taxes, 1870, & int.	Redemption printing.	Fees.	Total.
S e ¼	28	49	14	160	28 95	5 79	.....	.....	35	35 09
N w of & w ½ of n e of s e ¼	21	"	"	60	14 65	2 93	.....	.....	10	17 68
S e ¼ of s w ¼	6	48	13	40	5 25	1 05	3 44	.....	10	9 84
										62 61

Bid off by county.

RICH'D RELF,
Clerk of the Board of Supervisors.

Countersigned.
T. RITCHIE,
County Treasurer.

76 EXHIBIT F.

8—. County treasurer's office, Superior, Douglas county, Wisconsin.

Received of H. Hayes this 31st day of July, 1871, the sum of — dollars in full for taxes, interest, and charges for the year 1870 on

the following-described real estate, in the town of Superior, Douglas county, State of Wisconsin, as returned to this office by the treasurer of the town of Superior, in said county:

Part of section.	Section.	Township.	Range.	No. acres.	Total taxes.
Southeast q'r	28	49	14	160	$18 14
N ½ of s e "	29	"	"	80	9 07
N w of s e and w ½ n e of s e.	21	"	"	60	9 07
S e of s w	15	"	"	40	7 56
Und. ¼ of lots 3, 4, & 5	29	"	"	29.01	3 29
Und. ½ of s e of s w of n w	34	"	"	5	57
N ½ of s w of n w	34	"	"	20	2 27
					$49 97
Interest					3 50
					$53 47

77 EXHIBIT G.

$79.70. County treasurer's office, Superior, Douglas county, Wisconsin.

Received from H. Hayes this 2nd day of September, 1872, the sum of seventy-nine & $\frac{70}{100}$ dollars in full for taxes, interest, and charges for the year 1871 on the following-described real estate, in the town of Superior, Douglas county, State of Wisconsin, as returned to this office by the treasurer of the town of Superior, in said county:

Street.	Lots.	Total tax.
West 5th	303	4 46
" 4th	7	1 19
" 2nd	12, 14, 16	11 82
N w of s e and w ½ n e of s e	sec. 21, T. 49, R. 14, 60	10 86
Southeast q'r	" 28, " " " "	21 71
Southeast q'r	" 12, " 48, " 15, 160	21 72
		$71 26
Interest		5 69
Advertising		2 25
		$79 70

T. RITCHIE, *Treasurer.*

78 EXHIBIT H.

$81.07. County treasurer's office, Superior, Douglas county, Wisconsin. No. 215.

Received of H. Hayes this 11th day of May, 1874, the sum of eighty-one & $\frac{7}{100}$ dollars in full for taxes, interest, and charges for the year 1872 on the following-described real estate, in the town of

Superior, Douglas county, State of Wisconsin, as returned to this office by the treasurer of the town of Superior, in said county:

Description.	Sec.	T.	R.	Acres.	Lot.	Block.	Total tax.
N w of s e q'r and w ½ n e of s e q'r	21	49	14				$13 04
In west ½ of s e q'r	27	"	"	75			16 94
S e of s e of s w "	27	"	"				1 82
Southeast "	28	"	"				28 98
N e of s w of n w "	34	"	"				1 82
Und. ½ s e of s w of n w q'r	34	"	"				90
Und. ½ w ½ of n w q'r	3	48	13				4 69
							68 19
Interest							10 88
Advertizing							2 00
							$81 07

T. RITCHIE,
County Treasurer.

79 EXHIBIT I.

STATE OF WISCONSIN, }
Douglas County. }

$92.04. TOWN OF SUPERIOR, *Dec.* 31*st*, 1873. No. 26 B.

Received of H. Hayes ninety-two and $\frac{4}{100}$ dollars in full payment of all taxes charged on the following-described property on the tax roll of the above-named town for the year 1873:

Description.	Sec.	T.	R.	Acres.	Lot.	Block.	Fees.	Total tax.
S e ¼ of s w ¼	15	49	14	40				7 36
N e ¼ " s w ¼ of n w ¼	34	"	"	10				1 15
½ of lots 2, 3, & 4	10	"	"	17.71				6 14
W ½ of n e ¼ of s e ¼ and n w ¼ of s e ¼	21	"	"	60				8 28
S e ¼	28	"	"	160				18 40
Und. ½ of s e of s w of n w ¼	34	"	"	5				58
N ½ of s e ¼	29	"	"	80				9 20
W ½ " s e ¼	27	"	"	80				14 72
S e ¼ of s e ¼ of s w ¼	27	"	"	10				1 15
S e ¼ of s w ¼	6	48	13	40				2 76
Superior:								
West 2nd-St. lots	12	14	& 16					12 76
5th-St. lots					303			3 79
Personal tax								5 75
								92 04
Fees								1 84
								93 88

Personal property valuation.

GEO. F. HOLCOMB,
Town Treasurer.

80 EXHIBIT J.

STATE OF WISCONSIN, } ss:
County of Douglas, }

County treasurer's office. No. 490.

SUPERIOR, *May 11th*, 1875.

I, James Bardon, treasurer of the county of Douglas, in said State, do hereby certify that I did, at public auction, pursuant to notice given as by law required, on this 11th day of May, A. D. 1875, sell to Douglas county the land herein described for the sum of twenty-six dollars and sixty-three cents, said sum being the amount due and unpaid for taxes, interest, and charges on said lands for the year of our Lord one thousand eight hundred and seventy-four. The said Douglas county or assigns will therefor- be entitled to a deed of conveyance of said lands in three years from this date unless sooner redeemed from such sale according to law. Said lands are described as follows, with the sum for which each tract was sold set opposite each description—that is to say:

Description.	Sec.	Town.	Range.	Acres.	Amount.
Southeast q'r.....	28	49	14	.....	14 69

Copy of original certificate in clerk's office.
According to the facts.

JAMES BARDON,
County Treasurer.

Assigned to L. F. Wheelock April 7th, 1876, except N. ½ of S. E. q'r, sec. 29, T. 49, R. 14.

VINCENT COURNOYER,
County Clerk.

Am't, $19.06.

EXHIBIT K.

Ass't 1875. No. 490.

S. E. ¼.....				28	49	14
Und. ¼	3	4	5	29	49	14
Und. ½, S. E. ¼, S. W. ¼, N. W. ¼.....				34	49	14

Assigned to Mary E. Hayes this 24th day of May, 1876.

LEONARD F. WHEELOCK.

81 EXHIBIT L.

STATE OF WISCONSIN, }
Douglas County. }

$48.88. TOWN OF SUPERIOR, *February 17th*, 1876. No. 101 B.

Received of Hiram Hayes forty-eight & $\frac{88}{100}$ dollars in full payment of all taxes charged on the following-described property on the tax roll of the above-named town for the year 1875.

Description.	Sec.	T.	R.	Acres.	Lot.	Block.	Fees.	Taxes unpaid previous years.	Total tax.
S. E. ¼.....	28	49	14	160	.....	.....	.....	.....	9 60

GEO. F. HOLCOMB,
Town Treasurer.

82 EXHIBIT M.

STATE OF WISCONSIN, }
County of Douglas, } ss:

$27.52. County treasurer's office. No. 412.

SUPERIOR, *May 14th*, 1878.

I, James Bardon, treasurer of the county of Douglas, in said State, do hereby certify that I did, at public auction, pursuant to notice given as by law required, on this 14th day of May, A. D. 1878, sell to Douglas county the land herein described for the sum of twenty-seven dollars and fifty-two cents, said sum being the amount due and unpaid for taxes, interest, and charges on said lands for the year of our Lord one thousand eight hundred and seventy-seven. The said Douglas county or assigns will therefor- be entitled to a deed of conveyance of said lands in three years from this date unless sooner redeemed from such sale according to law. Said lands are described as follows, with the sum for which each tract was sold set opposite each description—that is to say, H. Hayes:

Description.	Sec.	Town.	Range.	Acres.	Amount.
*S. E. ¼.....	28	49	14	160	†11 30

*Redeemed July 14, 1885.
†Erased in copy.

According to the facts.

JAMES BARDON,
County Treasurer.

EXHIBIT N.

Assigned to Hiram Hayes Aug't 30, 1878.

GEO. F. HOLCOMB,
Deputy County Clerk.

83

EXHIBIT O.

Redemption Receipt.

STATE OF WISCONSIN, }
County of Douglas. }

$37.58. Supervisor's office. No. 24.

SUPERIOR, *January 7th*, 1880.

Received of Hiram Hayes the sum of thirty-seven dollars and fifty-eight cents in full for redemption from tax sale of May 13th, 1879, for the taxes of 1878 on the following-described lands, to wit:

Description.	Sec.	Town.	Range.	Tax.	Interest.	Fees.	Adv't'g.	Total.
S. E. ¼	28	49	14	$6 61		5		6 66

Countersigned.

GEO. F. HOLCOMB,
County Clerk.

Countersigned.

THOMPSON RITCHIE,
County Treasurer.

EXHIBIT P.

Redemption Receipt.

STATE OF WISCONSIN, }
County of Douglas. }

$29.29. Supervisor's office. No. 77.

SUPERIOR, *October 6th*, 1880.

Received of Hiram Hayes the sum of twenty-nine dollars and twenty-nine cents in full for redemption from tax sale of May 11th, 1880, for the taxes of 1879 on the following-described lands, to wit:

Description.	Sec.	Town.	Range.	Tax.	Interest.	Fees.	Adv't'g.	Total.
Southeast q'r.	28	49	14					10 69

Countersigned.

GEO. F. HOLCOMB,
County Clerk.

Countersigned.

THOMPSON RITCHIE,
County Treasurer.

84 EXHIBIT Q.

$121.64. County treasurer's office, Superior, Douglas county, Wisconsin. No. 15 A.

Received of H. Hayes this 15th day of May, 1881, the sum of one hundred twenty-one & $\frac{64}{100}$ dollars in full for taxes, interest, and charges for the year 1880 on the following-described real estate, in the town of Superior, Douglas county, State of Wisconsin, as returned to this office by the treasurer of the town of Superior, in said county:

Description.	Sec.	Town.	Range.	Acres.	Lot.	Block.	Total tax.
S. E. q'r.....	28	49	14	.....	.....	.....	15 16

THOMPSON RITCHIE,
County Treasurer.

EXHIBIT R.

$189.40. County treasurer's office, Superior, Douglas Co., Wisconsin. No. 35 A.

Rec'd of Hiram Hayes this 10th day of May, A. D. 1883, the sum of one hundred eighty-nine $\frac{40}{100}$ dollars in full for taxes, interest, & charges for the year A. D. 1882 on the following-described real estate, in the town of Superior, Douglas Co., Wisconsin, as returned to this office by treasurer of the town of Superior, in said county:

Description.	Street.	Sec.	T'p.	Range.	Amount.
S. E. ¼.....		28	49	14	21 59

JAMES S. RITCHIE,
County Treasurer.

85 EXHIBIT S.

STATE OF WISCONSIN, }
Douglas County. }

$68.21. TOWN OF SUPERIOR, *Jan'y* 29, 1884. No. 388 C.

Received of H. Hayes sixty-eight & $\frac{21}{100}$ dollars in full payment of all taxes charged on the following-described property on the tax roll of the above-named town for the year 1883:

Description.	S.	T.	R.	Acres.	Lot.	Block.	Valuation.	Fees.	Taxes unpaid previous y'rs.	Total taxes.
							$ Cts.			
S. E. ¼.....	28	49	14	.....	.....	.....	.....	.....	.....	68 21

H. E. LAFFITTE,
Town Treasurer.

EXHIBIT T.

STATE OF WISCONSIN, }
Douglas County. }

$2,277.08. TOWN OF SUPERIOR, *December* 30, 1884. No. 14 A.

Received of Land and River Improvement Company, per J. H. Hammond, two thousand two hundred and seventy-seven & $\frac{8}{100}$ dollars in full payment of all taxes charged on the following-described property on the tax roll of the above-named town for the year 1884:

Description.	S.	T.	R.	Acres.	Lot.	Block.	Valuation.	Fees.	Taxes unpaid previous y'rs.	Total taxes.
							$ *Cts.*			
S. E. ¼.....	28	49	14	.....	.....	.....	.....	.....	.....	88 00

H. E. LAFFITTE,
Town Treasurer.

86

EXHIBIT U.

STATE OF WISCONSIN, }
Douglas County. }

$5,493.88. TOWN OF SUPERIOR, *January* 9, 1886. No. 31 A.

Received of Land and River Improvement Company five thousand four hundred and ninety-three & $\frac{88}{100}$ dollars in full payment of all taxes charged on the following-described property on the tax roll of the above-named town for the year 1885.

Description.	S.	T.	R.	Acres.	Lot.	Block.	Valuation.	Fees.	Taxes unpaid previous y'rs.	Total taxes.
							$ *Cts.*			
S. E. ¼.....	28	49	14	.....	.....	.....	.....	.....	.....	72 06

W. C. WALDO,
Town Treasurer.

EXHIBIT V.

STATE OF WISCONSIN, }
Douglas County. }

$4,835.48. TOWN OF SUPERIOR, *January 10th*, 1887. No. 63 A.

Received of Land and River Improvement Company forty-eight hundred & thirty-five & $\frac{48}{100}$ dollars in full payment of all taxes

charged on the following-described property on the tax roll of the above-named town for the year 1886:

Description.	S.	T.	R.	Acres.	Lot.	Block.	Valuation.	Fees.	Taxes unpaid previous y'rs.	Total taxes.
							$ Cts.			
S. E. ¼.....	18	49	14	.....	.....	.....	3,200	.....	.....	72 66

JNO. KEAOUGH,
Town Treasurer.

87 EXHIBIT W.

STATE OF WISCONSIN, }
Douglas County. }

$27,149.94. TOWN OF SUPERIOR, *Jan.* 10, 1888. No. A 36.

Received of Land and River Improvement Company twenty-seven thousand one hundred & forty-nine and $\frac{94}{100}$ dollars in full payment of all taxes charges on the following-described property on the tax roll of the above-named town for the year 1887:

Description.	S.	T.	R.	Acres.	Lot.	Blk.	Valuation.	Fees.	Taxes unpaid previous y'rs.	Total taxes.
							$ Cts.			
S. E. ¼.....	28	49	14	.....	.....	.....	12,800	.....	.....	312 32

JNO. KEAOUGH,
Town Treasurer.

EXHIBIT X.

STATE OF WISCONSIN, }
Douglas County. }

$42,313.17. VILLAGE OF SUPERIOR, *January* 24, 1889. No. —.

Received of Land and River Improvement Company forty-two thousand three hundred thirteen & $\frac{17}{100}$ dollars in full payment of all taxes charged on the following-described property on the tax roll of the above-named village for the year 1888:

Description.	S.	T.	R.	Acres.	Lot.	Block.	Valuation.	Total taxes.
							$ Cts.	
S. E. ¼	28	49	14	160	.....	.....	32,000	612 15

C. F. FREY, *Treasurer.*

88 EXHIBIT Y.

STATE OF WISCONSIN, }
Douglas County. }

$95,712.23. CITY OF SUPERIOR, *Jan'y* 10, 1890. No. 137 "C."

Received of Land and River Improvement Company ninety-five thousand seven hundred twelve and $\frac{23}{100}$ dollars in full payment of all taxes charged on the following-described property on the tax roll of the above-named town for the year 1869:

Description.	S.	T.	R.	Acres.	Lot.	Block.	Valuation.	Total taxes.
							$ Cts.	
S. E. ¼	28	49	14	160	.....	.....	32,000	1,228 80

89 I, Irwin W. Gates, United States court commissioner for the western district of Wisconsin and one of the examiners of said court, do hereby certify that on the 27th day of May, A. D. 1890, I took the foregoing testimony of Hiram Hayes, Charles Lagro, Edwin Dundon, and F. W. Downer at the city of Superior, Douglas county, in said district; that said testimony was taken at the office of Hiram Hayes, at the county clerk's office, and at the office of F. W. Downer pursuant to a stipulation for the taking thereof then and there made by A. L. Sanborn, one of the solicitors for the complainant, and T. C. Ryan, one of the solicitors for the defendant, who personally appeared and attended upon the taking of said testimony; that the said testimony was taken by H. J. Smith, a disinterested person, in short-hand, in my presence in pursuance to the stipulation appearing in the caption of said testimony, and the same was read over to the respective witnesses after having been written out and signed by them respectively; that the said witnesses before giving their testimony were duly and publicly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth relative to said cause; that the exhibits to the testimony of said Hiram Hayes and Charles Lagro, numbered from A to Y, inclusive, were duly offered in evidence and attached by me to the said deposition.

I further certify that I am not of counsel nor attorney for either of the parties nor interested in the event of the cause.

Dated this 6th day of June, A. D. 1890.

IRWIN W. GATES,
United States Commissioner for the Western District of Wisconsin.

90 United States Circuit Court, Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY, Complainant,
vs.
THOMAS BARDON, Defendant.

The depositions of R. J. Wemyss and D. E. Roberts, witnesses on the part of the complainant, taken before I. W. Gates, one of the examiners of this court, pursuant to the stipulation attached hereto and also pursuant to the stipulation immediately preceding the testimony of the said R. J. Wemyss, on the 23rd day of July, A. D. 1890, at the office of F. W. Downer, in the city of Superior, Douglas county, Wisconsin.

It is stipulated that the testimony of R. J. Wemyss and D. E. Roberts may be taken in short-hand by Irvine L. Lenroot and afterwards extended on the typewriter, the reading of the witnesses and the signatures of the witnesses being hereby waived, and the said testimony when so extended shall have the same effect as if written out by the examiner and read over to and signed by the witnesses.

The said R. J. WEMYSS, being duly sworn, testified as follows:

Direct examination:

Q. Do you live in Superior, Mr. Wemyss?
A. A portion of the time.
Q. How long have you been in business or attending to the matters of the company?
A. Upwards of four years.
Q. You are an officer of the Land & River Improvement Co.?
A. Yes; general manager.
91 Q. How long have you been general manager?
A. Since June 15th, 1886.
Q. When was the company organized—about when?
Ans. In the early part of 1883.
Q. Can you state approximately the number of acres of land bought by the company?

Objected to as incompetent, immaterial, and irrelevant.

A. About forty-five hundred acres.
Q. Situated where with respect to West Superior?

Same objection.

A. Well, it's all within the limits of the city; all within the limits of the city of Superior.
Q. Does it lie upon the water front of the Bay of Superior or St. Louis bay?

Same objection.

A. Extending from the water front back to the township line.
Q. Township line of the town of Superior?
A. No; township 49, range 14, governmental township.

Q. Are you acquainted with the situation of the S. E. ¼ of section 28, township 49, range 14?

A. Yes, sir.

Q. How far does that lie from the water front directly north of it, say on Tower avenue, on the Bay of Superior?

Same objection as above.

A. It would be 2 miles and a half from the nearest shore line of navigable waters.

Q. The waters you speak of is St. Louis bay?

A. Yes, sir.

Q. Opposite section 16?

A. Yes, sir.

92 Q. State whether the company platted the town site of West Superior.

Same objection.

A. The company platted most of the plats of the town site of West Superior. There have been a great many plats filed.

Q. State whether the land purchased by the company lies in a body; and, if not, how nearly it is connected with it.

A. The land purchased by the company is not entirely in a body. It is nearly all connected.

Q. Do you mean that there are intervening pieces to which the company did not obtain control?

A. Intervening pieces that could not be acquired by the company.

Q. State what the object of the formation of the company was in respect to getting this land within the control of a single company or influence.

Same objection.

A. The object of the promoters of the company was to get land enough in a body to afford facilities for railroad and water shipping, manufacturing, and commercial purposes.

Q. State what the object of the company was in respect to encouragement and assistance to railway and manufacturing interests.

Same objection.

A. The policy of the company has always been to encourage shipping and manufacturing and commercial concerns, affording them facilities in the way of land gratis or at low prices, as the case might be or the circumstances might warrant.

Q. Now you can state what the company have done in that line by way of encouragement or assistance to those interests.

93 Same objection.

A. In the first place, the railroads were furnished their lands at actual cost; somewhere between six and eight hundred acres of land were furnished to the railroad companies for their terminal yards. A great deal of land of the company has been furnished

gratis, especially to the Terminal and Transfer Railroad Company, which was intended to afford terminal facilities.

Q. Furnished without cost?

A. Yes; a very considerable amount of land—I could not state the exact acreage—has been furnished to other concerns at from nothing to low-acre prices.

Q. Other manufacturing concerns?

A. Other manufacturing companies; the West Superior Iron and Steal Company was given about two hundred and fifteen acres, the American Steel Barge Company twenty acres, and various other concerns smaller tracts.

Q. What has been the policy of the company in regard to inviting manufacturing interests and encouraging their coming here and locating?

Same objection.

A. It is a fixed policy of the company to secure for this place all of the industrial and commercial concerns that it is possible to get, seeking to enhance the value of our property by the development of these concerns.

Q. Can you state approximately the amount of improvements, not counting the land on which said improvements stand, made by the company up to the present date?

Same objection.

A. The direct expenditure by the company has been upwards of six hundred thousand dollars in cash, not including the
94 water-works plant, which was built also by the company, in which upwards of two hundred thousand dollars was expended, and not including such assessments for improvements as have been paid to the city in the way of special taxes.

Q. But considered improvements?

A. Yes; I suppose it would amount, including this season, to not less than fifty thousand dollars; then, we have subsidized a great many improvements it would be impossible to give the amounts, and many improvements have been induced by extra concessions on prices and terms of sale of land we have made.

Q. The amount of those you cannot state?

Same objection.

A. There have been several hundred buildings put up on building contracts, a great many of which have had concessions made in the price of the property. It would take a considerable calculation to make an estimate of what it would amount to.

Q. The company has dealt in lands—sold lands since its organization—sold lots and lands, I suppose?

A. Sold lots.

Q. Sold lots for improvement?

A. We have only sold land for improvements or given away to railroad or manufacturing companies. We have not sold any lands on speculation. We have sold some lots on speculation.

Q. Are you acquainted with the values of lands in this vicinity from the time you came here as manager of the company?

A. Yes, sir.

Q. In your dealing for the company it came under your department to know and ascertain the selling prices and values of lands?

95 A. Yes, I made all the purchases and had charge of that branch of our business.

Q. Was there a rise in the value of the land in and about West Superior—a marked or emphatic rise on lands within the last few years; and, if so, when was it?

Same objection.

A. There was a very emphatic rise in the early part of 1887.

Q. Now, can you tell the value of the land in question, the S. E. ¼ of section 28, 49, 14, before that rise, shortly or immediately before?

Same objection.

A. It would have been about between forty and fifty dollars an acre.

Q. What was its value, in your judgment, immediately after the rise?

Same objection.

A. In the spring of 1887—March, April, 1887—that land would have been worth between four and five hundred dollars an acre; a rise of ten hundred per cent. in, say, eight or nine months.

Q. What, in your judgment, is the present value of the land?

Same objection.

A. About one thousand dollars an acre.

Q. At the time of this rise in 1887 had the railway companies come into Superior, or were they about coming in, that you have spoken of, to whom you gave land?

Same objection.

A. All that are in Superior now had come in or arranged to come in save the Duluth, South Shore & Atlantic. The others were all arranged for at that time.

Q. State how it was in regard to the manufacturing plants,

96 whether they were in or projected, or what the situation was in respect to them.

Same objection.

A. The Great Northern elevator has been built, the Lehigh Coal and Iron Company's coal dock had been built, and I do not remember at this moment just what other things were under way, either actually or on rumor; it was a very lively season, the spring of 1887.

Q. Will you state what the company paid, and in what, for the lands in question, S. E. ¼ of 28, 49, 14?

Same objection.

A. The company paid sixty-four hundred dollars.

Q. When?

Same objection.

A. The conveyances of date June 2nd, 1883. The deal may have been made earlier. It probably was.

Q. Was the consideration paid in cash?

Same objection.

A. Well, so far as our books show, it was.

Q. You do not recollect personally?

A. I did not make the transaction. It was before my time. The books show that the transaction was cash.

Q. About when was the bulk of the purchases of the lands by the company completed? I do not mean each piece, but the bulk of the purchases.

Same objection.

A. The bulk of the purchases was made in 1883 and 1884, in 1883 and the first part of 1884.

97 The said D. E. ROBERTS, being duly sworn, testified as follows:

Direct examination:

Q. You live in Superior?

A. Yes, sir.

Q. Ans have for how long?

A. Well, I have lived here since about the 10th of January, 1883.

Q. You are the county judge of Douglas county?

A. Yes, sir.

Q. Have you dealt in lands in Douglas county since you came here more or less?

A. More or less.

Q. Are you acquainted with the value of the lands in township 49, range 14, in 1883—June, 1883?

A. Well, I think I had a very fair idea of the value of lands at that time in this town, in this part of the county, 48, 13, and 14, and 49, 13, and 14.

Q. Do you know the situation of the southeast quarter of section 28, 49, 14?

A. Well, generally I do. I have been across the piece, but I do not know that I could locate the section corners or anything of that kind.

Q. What, in your judgment, was the fair market value in June, 1883, per acre of that tract of land?

Objected to as incompetent, irrelevant, and immaterial.

A. Well, I should say from thirty-five to forty dollars an acre,

and, I think, likely one might have run about some time to find a purchaser for it at that.

98 United States Circuit Court, Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY, Complainant,
vs.
THOMAS BARDON, Defendant.

I, Irvin W. Gates, a commissioner of the circuit court of the United States for the western district of Wisconsin and one of the examiners of said court, do hereby certify and return to said court that on the 22nd and 23rd days of July, A. D. 1890, pursuant to the stipulation attached hereto, signed by the solicitors of the respective parties, I took the testimony of James Bardon, Hiram Hayes, R. J. Wemyss, and D. E. Roberts and the same is herewith returned; that the testimony of the said R. J. Wemyss and D. E. Roberts was also taken in pursuance of the stipulation immediately preceeding the testimony of the said Wemyss, and that said testimony of said Wemyss and Roberts was not, for that reason, read over or signed by them, the said reading and signature having been duly waived; that all of said witnesses were, before giving any testimony, duly and publicly sworn to testify to the truth, the whole truth, and nothing but the truty relative ro said cause and were carefully examined by me and their testimony reduced to writing as follows:

The testimony of James Bardon was reduced to writing by Grafton Mason, a disinterested person, and in my presence and in the presence of the counsel for the respective parties and upon stipulation then and there made by them that the said testimony might be so reduced to writing by him; and the said testimony of Hiram Hayes was reduced to writing by myself, and the said testimony of R. J. Wemyss and D. E. Roberts was taken in short-hand by Irvine L. Lenroot pursuant to the aforesaid stipulation.

98½ And I further certify that I am not of counsel or attorney for either of the parties nor interested in the event of the cause.

——— ———,
United States Circuit Court Commissioner and Examiner.

99 Circuit Court of the United States for the Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY
vs.
THOMAS BARDON.

The deposition of James Bardon, of Superior, Wisconsin, taken on the part of the complainant, pursuant to the stipulation hereto attached, signed by the solicitors for the respective parties, taken by and before Irwin W. Gates, Esq., one of the examiners of this court, pursuant to said stipulation.

And the said JAMES BARDON, being duly sworn, testified as follows:

I live in Superior and have lived here for 33 years and am the brother of the defendant, Thomas Bardon.

I know James D. Ray. I obtained a quitclaim deed from him of the S. E. ¼ of 28, 49, 14, some years ago.

Q. 1. What money or cash, if any, did you pay Mr. Ray for that quitclaim?

(Objected to as irrelevant, incompetent, and immaterial.)

Ans. I paid him, as near as I can remember, about $100; perhaps more.

Q. Afterwards you gave your brother, the def't, a special warranty deed for the same land. What money or cash, if any, did you receive from def't as a consideration for the deed to him?

(Objected to as incompetent, immaterial, and irrelevant.)

Ans. The conveyance to my brother, Thomas Bardon, was a matter of family arrangement. I long ago decided that whatever benefits should come from that land should go to my father's
100 family—to my father and to my mother and sisters—and the title was transferred by me to Thomas so that he might hold it instead of me; the defendant made no actual payment of money or cash at the time the deed was delivered to him.

Q. Why did you prefer that your brother should hold the land as a trustee under this family arrangement instead of your holding it?

(Same objection.)

Ans. I thought that if there was to be litigation about the land that he ought to bear the burden of it instead of me, for the reason that I had, as I thought, borne more than my share of other burdens for the family.

Q. This trust arrangement existing between — is not expressed in any written paper between you and your brother?

(Same objection.)

A. No, sir; I think not.

Q. Is there any written or oral agreement between you that he

is, in any event, to reconvey the land to you or let you have it back or any part of it or any interest in it?

(Same objection.)

A. No, sir; none whatever.

101 In the Circuit Court of the United States for the Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY, Complainant,
vs.
THOMAS BARDON, Defendant.

The testimony of Edwin V. Mundy, William J. Leader, Charles Lagro, Irvin W. Gates, and Frederick W. Downer, Jr., taken in pursuance of the order appointing a term probatory and the extention thereof by stipulation, by and before Irvin W. Gates, Esquire, United States court commissioner of said western district of Wisconsin and one of the examiners of said court, at the city of Superior, in said district, on the first day of September, A. D. 1890.

Counsel for complainant offered in evidence certificate of organization of the Land & River Improvement Company, to — counsel of defendant objects as immaterial and irrelevant, but does not object to the authentication. (Marked Compl't's Exhibit Z.)

Counsel for complainant offered in evidence a certified copy of tax deed, county of Douglas to Hiram Hayes, recorded in volume 1 of Tax Deeds, on page 378, to which counsel for defendant object to as incompetent, immaterial, and irrelevant. (Marked Compl't's Exhibit 1.)

Counsel for complainant offers in evidence certified copy of tax deed, Douglas county to Hiram Hayes, recorded in volume 2 of Tax Deeds, on page 251, to which counsel for defendant objects as irrelevant, immaterial, and incompetent. (Marked Compl't's Exhibit 2.)

102 Counsel for complainant offers in evidence certified copy of original entry of tax deed, Complainant's Exhibit No. 1, to which counsel for defendant objects as irrelevant, immaterial, and incompetent. (Marked Compl't's Exhibit 3.)

Counsel for the complainant offers in evidence certified copy of the tax records in the offices of the county treasurer and county clerk, to which counsel for defendant objects as irrelevant, immaterial, and incompetent, and also because the certificate is a joint certificate of the county treasurer and the county clerk, and the county clerk testified before that all these records were in his office except the assessment-rolls. (Marked Compl't's Exhibit 4.)

EDWIN V. MUNDY, being first duly sworn, testified as follows:

Q. 1. Are you the register of deeds of Douglas county?

Ans. I am, sir.

Q. 2. How long have you held that office?

Ans. About a year and a half.

Q. 3. Were you connected with the office in any way before that?

Ans. No, sir.

Q. 4. Produce volume 1 of Tax Deeds, pages 378 and 379, of the records of your office, and compare page 378 with the photograph which I now hand you. (It is admitted that the photographic copy of the record of the deed mentioned is a fac-simile.) Marked Def't's Exhibit A. Offered in evidence.

It is admitted that Defendant's Exhibit B is a fac-simile copy of the acknowledgment of Defendant's Exhibit A, recorded on page 379 of said book. Offered in evidence.

Q. 5. Produce the original of general index, otherwise called grantors' index, that was in use September 7, 1870; examine
103 it and state approximately the length of time covered by that index.

Ans. From February 1, 1858, to January 1, 1871.

Q. 6. Find the letter or letters under which tax deeds are indexed. What is the letter?

Ans. The letter D.

Q. 7. Are there any tax deeds indexed there under "S" or "W," "State of Wisconsin," or "Wisconsin, State of"?

(It is conceded by counsel for complainant that there are not).

Q. 8. Turn to "D" and the double page containing entries purporting to be made in September, 1870. Compare the upper portion of that double page with the photograph I now hand you.

(It is conceded that the photograph is an exact copy.) Offered in evidence and marked Def't's Exhibit C.

(Counsel for defendant now offers in evidence Exhibit D, a certified copy of the record of tax deed on page 251 of volume 2 of Tax Deeds).

Q. 9. Now examine Defendant's Exhibit D and produce the book and page from which the copy was made. What is the record number of the deed there recorded?

Ans. B 11679.

Q. 10. Find the general index, otherwise called the grantors' index, in which the record of that deed is entered.

Ans. I have it.

Q. 11. What is the number there given?

Ans. It is B 11679.

Q. 12. What do you find in the column headed "Descriptions"?

Ans. Lands in Douglas county. "See record" in parenthesis.

Q. 13. Do you find a double column there headed "Where recorded"?

Ans. Yes, sir.

Q. 14. Subdivided into two columns, one headed "Book" and the other headed "Page"?

Ans. Yes, sir.

Q. 15. What is in the column headed "Book"?

Ans. A ditto-mark.

Q. 16. What is the last written entry in that column above the ditto-mark?

Ans. Figure 2, letter O, and part of the letter F.

104 Q. 17. What entry is opposite this number B 11679 in the subcolumn headed "Page"?

Ans. A ditto-mark.

Q. 18. What is the last entry in that column above the ditto-mark?

Ans. Part of the letter F, ditto-mark, and figure- 24.

Q. 19. Ans what is above the ditto-mark that is just above the 24?

Ans. The word "tax" and part of "F."

Q. 20. Is there any year entered in the column headed "Date of filing" opposite No. B 11679?

Ans. No, sir.

Q. 21. Is there any section, town., or range given opposite No. B 11679?

Ans. No, sir.

Q. 22. Is that deed entered in that index book under any other letter or in any other place?

Ans. No, sir.

Cross-examination by Mr. SANBORN:

Q. 23. Mr. Mundy, will you read the entry about which you have been examined, reading first the headings at the top of the column, then following it with what appears under such heading in each column respectively, commencing at the head of the column and then reading down to the entry the item in each respective column?

Ans. First column, heading would be 1882; written entry, B 11679.

Second column, heading "Date of filing;" written entry, June 2d, 10 a. m.

Third column, heading "Grantor; entry, "Douglas county."

Fourth " " "Grantee; " "Hiram Hayes."

Fifth " " "Instrument;" " "Two ditto-marks."

Q. 24. In the same column what is the next preceding written work above the first set of ditto-marks?

Ans. "Tax."

Q. 25. In the same column what is the first word written out next above the second set of ditto-marks?

Ans. "Deed."

(Witness proceeds with answer to question 23.)

Sixth column, heading "Description"; entry, "Lands in

105 Douglas county." "See record" (in parenthesis).

Seventh column, heading "Section;" no entry.

Eighth column, heading "Township;" no entry.

Ninth column, heading "Range;" no entry.

Tenth column is a double column, heading "Where recorded" and "Book page."

Q. 26. Entry in left-hand part of double column, what?

Ans. Ditto.

Q. 27. The figure first above the ditto mark in the same column is what?

Ans. The figure "2."

Q. 28. Entry in the second part of double column is what?

Ans. Ditto.

Q. 29. Word next above the ditto-marks in the same column, what?

Ans. Tax.

(Witness proceeds with answer to question 23:)

Eleventh column, heading "To whom delivered;" entry is figure 25 out in the left-hand part of the column, and in the right-hand part of the column "Do."

Q. 30. What are the words next above the entry of "Do." in the same column?

Ans. H. Hayes.

(Witness proceeds:)

Twelfth column, heading "Recording fee;" double column; figure 1 in the left-hand part of the double column.

FREDERICK W. DOWNER, JR., being first duly sworn, testified as follows:

Q. 31. Are you the general managing attorney-at-law of the complainant in this action?

Ans. Yes, sir.

Q. 32. You said in your examination as a witness for the complainant that it was by your directions and those of Mr. Wemyss that John Darley was put into possession of the land in con-
106 troversy in this case; is that so?

Ans. Yes, sir.

Q. 33. What was your object in taking possession of the property?

(Objected to as incompetent and immaterial.)

Ans. We wanted to have it cleared up and stop trespassers from going in there. Mr. Darley has been engaged in clearing the land ever since he has been in there.

Q. 34. Was there not some purpose that made your company or yourselves take possession of that land immediately at that time, aside from the one that you mentioned?

(Objected to as incompetent and immaterial.)

Ans. We had a fence around it for two years. Inasmuch as there was liable to be some litigation over it, I thought that, as well as clearing the land, it would be well to have some one in there, as parties had been going in there, breaking down the fences and turning their cattle in there.

Q. 35. Had you made up your mind that the present form of action could not be brought without taking possession?

(Objected to as incompetent and immaterial.)

Ans. No, sir.

Q. 36. Had you not determined upon bringing this action before you took possession?

(Objected to as incompetent and immaterial.)

Ans. Yes; we had determined to bring an action.

Q. 37. Had you determined to bring this form of action?

Ans. I cannot swear as to that: the fact is, Messers. Pinney & Sanborn had entire control of the action since it was brought.

Q. 38. I refer not to before the action was brought. You say you determined to bring an action before the land was taken possession of?

WITNESS: We left the form of the action to the discretion of Messrs. Pinney & Sanborn.

107 Q. 39. Did not Messrs. Pinney & Sanborn then tell you to take possession before you could bring the action?

(Objected to as incompetent and immaterial.)

Ans. I would not swear to that. I do not remember whether I did it of my own volition or whether they said it.

Q. 40. Was not one object and purpose of taking possession of this land to put the company in a position where it could bring this action?

(Objected to as incompetent and immaterial.)

Ans. No; I do not know necessarily that it was so that we would be in a position; did not think anything at that time about this particular action, but decided it was best to get into possession either to sue or to be sued. Either Mr. Harney or Mr. Bardon might bring suit against us.

(By Mr. BAILEY:)

Q. 41. What property has this company purchased, sold, or improved since its organization in the State of New Jersey, if any?

(Objected to as immaterial.)

Ans. I cannot tell you anything about that, as I have not had anything to do with that branch of the business.

Q. 42. Who is the president of this company?

(Objected to as immaterial.)

Ans. Francus H. Weeks.

Q. 43. And the secretary?

(Objected to as immaterial.)

Ans. Henry W. De Forrest.

Q. 44. Where do they reside?

(Objected to as immaterial.)

Ans. New York city.

Q. 45. Have you an office in the State of Wisconsin?

(Objected to as immaterial.)

Ans. Yes, sir.

Q. 46. Where is it located?

(Objected to as immaterial.)

Ans. Corner of Tower avenue and Winter streets, city of
108 Superior, Douglas county, Wisconsin.

Q. 47. And at this office what business of this company is transacted?

(Objected to as immaterial.)

Ans. Considerable of their business is done in the city of Superior. Sales of land are made, there are houses rented, and the general management of the Wisconsin lots.

Q. 48. Where are the books of the corporation kept?

(Objected to as immaterial.)

Ans. Some of them are kept here and some in the East.

Q. 49. What place in the East?

(Objected to as immaterial.)

Ans. I would not swear to that. I think some are kept in New York city. I think some in the New Jersey office.

Q. 50. Have they any person in continual charge of their office in New Jersey for the transaction of business?

(Objected to as immaterial.)

Ans. I do not know.

Q. 51. Where is the secretary now?

(Same objection.)

Ans. I could not tell you.

Q. 52. Is he in this city?

Ans. I have not had a letter from him for several months and could not say where he is.

Q. 53. Have you ever heard of the company having any business in New Jersey?

(Same objection.)

Ans. Yes; I have.

Q. 54. What?

Ans. I heard of their having their meetings there to transact corporate business.

Q. 55. Have you heard of their doing any of the business for which they were organized outside of the election of officers?

(Same objection.)

Ans. No.

WILLIAM J. LEADER, being first duly sworn, testified as follows:

Q. 56. Are you the deputy county treasurer?

Ans. Yes, sir.

Q. 57. How long have you been in the office?

109 Ans. I think I was appointed in May, 1889—a year ago last May.

Q. 58. Is there in your office any assessment-roll for the year 1866?

Ans. No, sir; we have no assessment-rolls.

Q. 59. Are there any tax rolls in your office?

—. No, sir; we file them with the county clerk when we get through collecting taxes.

Q. 60. Are there any delinquent returns in your office?

Ans. No, sir; these are filed with the county clerk too.

Q. 61. Produce the sales book 1867, taxes 1866.

Ans. This is the sales book of 1867 and other years.

Question 62. Turn to page 470.

Ans. I have it.

Q. 63. Do you find the southwest quarter of section 28, township 49, range 14, entered there?

Ans. Yes, sir.

Q. 64. Read the whole of that entry, reading each column, first the printed heading of the column and next the written entry.

Ans. The page is headed "470, town of Superior, Douglas county, in large type. There is written at the top of the page, "Town. 49, range 14."

First column, heading "When paid;" entry, —.

Second column, heading "Owner;" entry, "S. E. ¼ sec. 28."

The next column that contains an entry is headed "Taxes;" the entry is "12–81," with a line between. The next column containing an entry is headed "Interest;" a double column with the entry "1–08," with a line between the 1 and the cipher. The next column is headed "Advertising;" double column with the entry "25" in the second part of the double column. The next column is headed "Total;" a double column with the entry "14-08" with a line between the 14 and the 08. The next column is headed "Remarks," and the entry is "H. Hayes."

Q. 65. Do you find the original affidavit of posting notices of that tax sale written in that book?

110 Ans. Yes, sir; I find the original here, on page 434 of the book in question.

Q. 66. Read all that portion of the affidavit which refers to p-sting notices of the tax sale, omitting that part which relates to publication of the notices in the newspaper.

(Objected to as incompetent, irrelevant, and immaterial, and because any defect in said notice is cured by the statutes of limitation, and also objected to as not the best evidence.)

Ans. I also posted a printed copy of notice of sale in a conspic-

uous place in my office, one in the post office, one at the door of the court-house, and one near the entry of my office on Second street.

Q. 67. Produce the sales book of 1877, taxes of 1876.

Ans. I have it.

Q. 68. Do you find the same description of the land there?

Ans. Yes, sir.

Q. 69. Read the page heading and the whole entry as to that land, including column headings, in the same manner as you did in the other book.

Ans. 205, record of statement of lands sold at tax sale May 8th, 1877. First column, heading, No. of certificate; entry in that column opposite this description is "325" in figures. The second column, headed "To whom assessed;" the entry in that column opposite this land is "Hiram Hayes." The next column is headed "Description:" the entry in that column is "S. E. ¼ sec. 28, t'p 49, R. 14, 160 acres." The next column is a double column headed "Amount," with the mark "8" in the first half and "cts." in the second half; opposite this description is "8 89," with a line between the 8 and 89—8 in the dollar column and 89 in the cents column.

111 The next column is headed "Total amount;" a double column with "8" in the first column and c. in the second, and no entry. Next column is headed "By whom redeemed;" no entry. Next column is a double column headed "Amount" with "8" in the first half and c. in the other half; no entry opposite this land. Next column is headed "To whom deeded;" no entry. Next column is headed "Year"; no entry. Next column is headed "Month;" no entry. Next column is headed "Day;" no entry. Next column is headed "Receipt of amount;" no entry.

The defendant offers in evidence Exhibit E, a certified copy of the appointment of Thompson Ritchie as deputy county clerk.

(Objected to as incompetent and immaterial.)

Defendant offers in evidence Exhibit F, a certified copy of original tax certificate No. 118, sale of 1867.

(Objected to as incompetent and immaterial.)

Defendant offers in evidence Defendant's Exhibit G, a certified copy of the original tax certificate No. 325, sale of 1877.

(Same objection.)

Defendant next offers in evidence Defendant's Exhibit H, a certified copy of the order and determination of the county board of supervisors of Douglas county creating the town of Nemadji.

(Objected to as incompetent and immaterial.)

Defendant offers in evidence Defendant's Exhibit I, being a certified copy of the order and determination of the county board of supervisors of Douglas county creating the town of Pokegama.

(Objected to as incompetent and immaterial.)

Defendant next offers in evidence Defendant's Exhibit J, being a certified copy of the resolution of the county board of supervisors of Douglas county therein mentioned.

(Same objection.)

Defendant next offers in evidence Defendant's Exhibit K,
112 a certified copy of the original bill of Hiram Hayes against Douglas county and of the affidavit thereto attached and of the indorsement thereon.

(Same objection.)

CHARLES LAGRO testified as follows:

Q. 70. You are the county clerk of this county?

Ans. Yes, sir.

Q. 71. You have already been sworn in this case?

Ans. Yes, sir.

Q. 72. You testified on your examination by the complainant that you had the custody of all the tax records of Douglas county except the assessment-rolls?

Ans. Yes.

Q. 73. Will you examine the record of proceedings of the board of supervisors of Douglas county and state what towns were represented by supervisors upon the county board during 1859 and 1860?

(Objected to as incompetent and immaterial.)

Ans. I read from the record on page 117, dated meeting of April 21st, 1859, as follows: The following supervisors appeared and answered to their names: Township of Nemadji, Patrick Fay; township of Pokegama, Samuel G. Carolin; township of Superior, Richard G. Coborn.

Q. 74. Turn to page 156 of the same book. What towns of the county are represented in the equalization there made by the county board for the taxes of 1859?

(Same objection.)

Ans. Superior, Pokegama, and Nemadji.

Q. 75. What entry do you find on page 170 of the same book?

(Same objection.)

Ans. New board elected Apr. 3rd, 1860, as follows: Nemadji, Patrick Fay; Pokegama, Charles H. Kingsbury; Superior, Denis Dean.

Q. 76. Turn to page 188 of the same book. What towns do you find there represented in the order of equalization made by the county board for the taxes of 1860?

(Same objection.)

113 Ans. Nemadji, Pokegama, and Superior.

Q. 77. Produce the sales book of the year 1867—taxes 1866. Do you find the S. E. ¼ section 28, township 49, range 14, entered there?

Ans. Yes.

Q. 78. What is the number of the tax certificate placed opposite that description?

(Same objection.)

Ans. 118.

Q. 79. On your examination as a witness for the complainant you were asked to produce the delinquent tax roll of 1867, and in response you produced a book. Will you now produce the same book?

Ans. I have it.

Q. 80. Read the labels on the back of the book.

Ans. Delinquent, 1865, '6, '7; lots, blocks, and lands; Douglas county.

Q. 81. What years are placed at the head of the pages?

Ans. Pages 1 to 23, 1865; 24 to 38, 1866; 40 to 59, 1867.

Q. 82. Are the pages from page 1 to 59 taken up with unplatted lands?

Ans. Yes; so far as I know.

Q. 83. And is the remaining portion of the book taken up with descriptions of platted lands for the same three years?

Ans. Yes; it appears to be.

Q. 84. Is there any signature in the book or any statement as to by whom or by what officer it was made, or when it was made, or when it was filed?

Ans. I do not find anything in the book.

Q. 85. Turn to page 24. Do you find the southeast quarter of section 28, township 49, range 14, entered on that page?

Ans. Yes.

Q. 86. Read the printed heading of the page.

Ans. Delinquent list of taxes in Douglas county for 1866.

Q. 87. Is there in the last column of the page, opposite this description, a ditto-mark?

(Objected to as incompetent and immaterial and not the best evidence.)

Ans. I don't think there is.

Q. 88. Is there anything in that column?

114 Ans. There appears to be a check-mark.

Q. 89. Describe it.

Ans. Two dots.

Q. 90. Is that character the same as the marks that are used for ditto-marks in the columns "Section," "Township," and "Range" on that page?

Ans. It looks just like it.

Q. 91. What is the last written entry in that same column above the mark?

Ans. I don't think there is any under the circumstances.

Q. 92. Are there no written entries in that column?

Ans. Yes.

Q. 93. What is the last one?

Ans. Paid July 22d. E. W. A.

Q. 94. What description of land is that written entry opposite?

Ans. The west part of S. E. ¼ section 23, town. 49, range 14.

Q. 95. There is an amount of tax, is there?

Ans. 56 acres; 813 and 65c.

Q. 96. Do you find these same characters that you have been

talking about—these two dots—on the line immediately under this written entry?

Ans. I find it on the line immediately under it, but not under these words.

Q. 97. I will ask you if the "p" in the word "paid" is not directly over these dots.

Ans. Part of it.

Q. 98. Bottom part of it?

Ans. Bottom and side.

Q. 99. Are not these two marks—dots—continued opposite each entry from that place down to the two dots opposite the land in question?

Ans. They are, under each other.

Q. 100. Under each other?

Ans. Yes.

Q. 101. Produce an account book, kept in the county clerk's office, called the journal.

Ans. I have it here.

Q. 102. Turn to page 379 and state what accounts you find there. State whom the account is against.

(Objected to as incompetent, irrelevant, and immaterial.)

The first account on the page.

Ans. The account is against Hiram Hayes.

115 Q. 103. Read the first line of the account.

Ans. Heading of journal page is 379, ledger page 245: Hiram Hayes to sundries on res., June 22, p. 342.

Q. 104. Does the account contain any charges for tax certificates for 1877?

Ans. Yes.

Q. 105. State whether certificate No. 325 is one of the certificates charged for that year.

Ans. It is charged to him and credited to certificates of 1877.

Q. 106. What amount is he charged for that certificate in that account?

(Objected to as incompetent, irrelevant, and immaterial.)

Ans. $69.31.

Q. 107. State the total amount of that account on page 379 of the ledger against Hiram Hayes.

Ans. The total amount is $335.77 charged against Hayes. That is credited to the several years' certificates.

Q. 108. Turn to page 430 of the same book. Read the statement made there of the account with Hiram Hayes, dates Nov. 29th, 1879.

Ans. Douglas county, debit, $335.77; to Hiram Hayes, credit, $335.77; to bill for legal services in Usher and Reaser suits and other equity actions. The above bill was settled with tax certificates, &c., under resolution of the board, June 23, 1878.

Q. 109. Have you got any other book in the office which purports

to be a delinquent return for the taxes of 1865, '6, or '7 or which is so called, aside from the one we have here?

(Objected to as incompetent, irrelevant, and immaterial.)

Ans. No, sir.

(Counsel for defendant offers in evidence Exhibit L, a certified copy from the records of the board of supervisors of meeting held May 28, 1872; to which counsel for complainant objects as incompetent and immaterial.)

Cross-examination by Mr. SANBORN:

116 Q. 110. Mr. Largo, state whether page 24 of the delinquent tax list for 1866 commences the list for that year.

Ans. It does.

Q. 111. State whether the so-called ditto marks or dots which you have testified appear opposite the entry in said book of the south-east quarter of section 28, township 49, range 14, appear opposite the first entry in said book for 1866.

Ans. They do.

Q. 112. Do they appear in the same column?

Ans. They do.

Q. 113. Do they appear in the same place in the column?

Ans. Yes.

Q. 114. Are there any words in the column above them where they first appear?

Ans. No.

(It is stipulated that the testimony of Irvin W. Gates, examiner in this cause, may be taken in short-hand in the same manner that the testimony of the other witnesses has been taken, and when written out by the stenographer shall have the same effect as though said witness had given his testimony before some other examiner of said court.)

IRVIN W. GATES, being duly sworn, testified as follows:

Q. 115. Mr. Gates, state whether you were county treasurer in the year 1867.

Ans. I was.

Q. 116. Will you examine the book before mentioned in the testimony of Mr. Largo, called the delinquent 1865, '6, '7 lots, blocks, and lands, and state whether that book was in your office as county treasurer or was returned to you by the town treasurer of the town of Superior as the delinquent list of taxes in Douglas county for 1866?

(Objected to as incompetent and immaterial.)

Ans. It was returned by the town treasurer.

Q. 117. Was it the only book returned by him and used in your office as such delinquent return?

Ans. It was the only delinquent return.

117 Q. 118. Will you examine page 24 of the book and subsequent pages and state whether you can say what — the signification of the dots ordinarily used for ditto-marks appearing in the right-hand column of each page, near the left side of such column, close to the red line separating said column from the column marked "Amount of tax"?

(Objected to as incompetent and immaterial.)

Ans. They were placed there in comparing this list with the printer's list for advertising to *donate* that those tracts opposite which they are placed were found in the printer's list.

Q. 119. Do those marks opposite the entry of the S. E. quarter of sec. 28, t'p 49, R. 14, in said book, on page 24, in any manner indicate that the taxes of 1866 were paid?

(Objected to, as it calls for judgment based upon the facts, and as incompetent, irrel/evant, and immaterial.)

Ans. They were not intended to indicate payment.

Q. 120. Were the taxes of 1866, of $12.81 or any other amount due upon the S. E. quarter of sec. 28, t'p 49, R. 14, paid to you as county treasurer?

Ans. In answering that I should rely upon the book—take the book as it is before me as evidence they were not paid.

Q. 121. Who made these marks mentioned, Mr. Gates?

Ans. They were either made by myself or some — authorized by me to review the *w*inter's list.

Q. 122. State whether these marks appear through the book generally for the year 1866.

Ans. They do.

Q. 123. Explain from anything in said book how the entries of payment were made. (Objected to as incompetent and immaterial.) Explain fully the use of the marks.

Ans. Where payments were made prior to the delivery of the list to the printer the marks do not appear. When payments
118 were made subsequent to the delivery of the list the marks do appear, as well as the full statement of payment.

Q. 124. Give an instance of what you have stated opposite the entry on said page 24 of the N. E. 22, 49, 14.

(Same objection.)

Ans. In the N. E. 22, 49, 14, "p'd Sep. 2d," the marks so appear, that being subsequent to the advertising.

Q. 125. Illustrate also in the entry on the same page of the west part of the ¼ 23.

(Objected to as incompetent and immaterial.)

Ans. The marks opposite that description do not appear, being paid July 22, prior to the delivery of the list to the printer.

Cross-examined by Mr. RYAN:

Q. 126. Is your testimony based upon the book or your memory?

Ans. My memory of the use of the book. I have a distinct recollection of making the review with Washington Ashton, the printer.

Counsel for complainant offers in evidence certified copy of the order of the board of supervisors of Douglas county, dated January 19, 1861, and found on page 202 of the record of proceedings of the board of supervisors of Douglas county in respect to the vacation of the towns of Pokegama and Nemadji. (Objected to as incompetent and immaterial.) Marked Compl't's Exhibit 5.

Complainant's counsel further offers in evidence certified copy of the records of the town of Superior from April 2, 1861, to December 26, 1866. (Objected to as incompetent and immaterial.) Marked Compl't's Exhibit 6.

Counsel for complainant further offers in evidence certified copy of appointment of Thompson Ritchie as deputy clerk, with the indorsements thereon. (Counsel for defendant objects to the indorsements as irrelevant, incompetent, and immaterial.) Marked
119 Compl't's Exhibit 7.

Also offers certified copy of the revocation of the appointment of Thompson Ritchie as deputy clerk, and the appointment of D. C. Relf as deputy clerk, with indorsement on the same. (Objected to as irrelevant, incompetent, immaterial and because a county clerk has no authority to revoke the appointment of a deputy county clerk.) Marked Compl't's Exhibit 8.

SEPTEMBER 2, 1890.

Complainant's counsel offers in evidence certified copy of the record of proceedings of the special meeting of the board of supervisors of Douglas county held May 28, 1872, and found on pages 116 and 117 of the record of such proceedings. Marked Compl't's Exhibit 9.

Counsel for complainant further offers in evidence a certified copy of the record of proceedings of the meeting of said board of supervisors held July 2, 1873, and found on pages 171 and 172 of said record. Marked Compl't's Exhibit 10.

Counsel for complainant further offers in evidence a certified copy of the certificate of D. George Morrison, register of deeds, found in the copy of volume 2 of the general index of conveyances in the office of the register of deeds of Douglas county, made under the above resolutions. Marked Compl't's Exhibit 11.

It is stipulated that Complainant's Exhibit 3, it being a copy of the entry of the tax deed to Hiram Hayes, dated September 5, 1870, in the general index, was taken from the above-mentioned copy of the general index, made under the resolutions of the board of supervisors already offered in evidence.

It is further stipulated that none of the tax deeds of record in the register's office of Douglas county, Wisconsin, have been indexed under the name of the "State of Wisconsin" under
120 the letter "S" in such index or under the name of "Wisconsin, State of," under the letter "W" in such index, and that the respective registers of deeds have been and are accustomed

to enter the same under the letter "D" with the name of "Douglas county," as grantor.

These stipulations are subject to the objection as to incompetency, irrelevancy, and immateriality of the matters therein stated.

Counsel for complainant further offers in evidence a certified copy of the page of the general index under the letter "D" which contains the entry in such index of the tax deed to Hiram Hayes, dated June 1, 1882, in respect to which E. V. Mundy, register of deeds, was examined in this case September 1, 1890.

It is further stipulated that counsel for defendant may obtain within the next ten days a photographic copy of such page in lieu of the above-certified copy, at the expense of both parties, to be born- equally by them; the said photographic copy to have the same effect as a certified copy, without being actually certified. Marked Compl't's Exhibit 12.

121 I, Irvin W. Gates, United States court commissioner for the western district of Wisconsin and one of the examiners of said court, do hereby certify that on the first day *od* September, A. D. 1890, I took the foregoing testimony of Edwin V. Mundy, William J. Leader, Charles Largo, Irvin W. Gates, and Frederick W. Downer, Jr., at the city of Superior, Douglas county, in said district; that said testimony was taken at the register's office, treasurer's office, county clerk's office, in said Superior, pursuant to the order and stipulation mentioned in the caption hereto; that A. L. Sanborn, one of the solicitors for the complainant, and W. F. Bailey, Esquire, solicitor for the defendant, and Messrs. W. C. Silverthorn and T. C. Ryan, counsel for the defendant, appeared at and attended upon the taking of said testimony; that said testimony was taken by Grafton Mason, a disinterested person, in short-hand in my presence, pursuant to the stipulation made by said solicitors and counsel to the effect that the same might be taken by said Mason in short-hand and extended upon the typewriter with the same effect as if written by me, and that the same need not be read over or signed by the said witnesses; that said witnesses before giving their testimony were duly and publicly cautioned and sworn by me to tell the truth, the whole truth, and nothing but the truth relative to said cause; that my own testimony was taken down by said Mason pursuant to a stipulation in reference thereto, herewith returned; that complainant's exhibits lettered A to Z and numbered 1 to 12, inclusive, and defendant's exhibits lettered A to L, inclusive, were duly offered in evidence and attached by me to the said testimony; and I further certify that I am not counsel nor attorney for either of the parties nor interested in the event of the cause.

Dated this — day of September, A. D. 1890.

I. W. GATES,

United States Court Commissioner for the Western District of Wisconsin and Examiner of said Court.

122 DEFENDANT'S EXHIBIT E.

I hereby constitute and appoint Thompson Ritche, of Superior, my deputy clerk, for me and in my stead to perform the duties of my office of clerk of the board of supervisors until otherwise provided.

Superior, Wisconsin, Jan. 4th, 1869.

RICH'D RELF,
Clerk Board of Supervisors, Douglas Co., Wis.

COUNTY CLERK'S OFFICE,
SUPERIOR, WIS., *August* 30, 1890.

I hereby certify that the above is a true and correct copy of the original now on file in this office, and that I have carefully compared the same with the original.

[SEAL.] CHARLES LAGRO,
County Clerk.

123 DEF'T'S EXHIBIT F.

No. 118.

STATE OF WISCONSIN, }
County of Douglas, } *ss:*

COUNTY TREASURER'S OFFICE,
SUPERIOR, *Sept.* 3, 1867.

I, Irwin W. Gates, treasurer of the county of Douglas, in said State, do certify hereby that I did, at public auction, pursuant to notice given as by law required, on the 3rd day of September, sell to Hiram Hayes the lands herein described for the sum of sixteen dollars and ninety-three cents, said sum being the amount due and unpaid for taxes, interest, and charges on said lands for the year of our Lord one thousand eight hundred and sixty-six; that said Hiram Hayes or assigns *with* therefor- be entitled to a deed of conveyance of said land in three years from this date unless sooner redeemed from such sale according to law. Said lands are described as follows, with the sums for which each tract was sold set opposite each description—that is to say:

Und. ½ of N. E. ¼ of S. W. ¼ of sec. 15, township 49, R. 14 (Redeemed*)..	[2 55†]
[S. E. ¼ of†] [" 28"] (Deeded Sept. 5th, 1870*).....	[14 08†]
(Not redeemed Nov. 19, 1868)‡ fees.....	30
Hiram Hayes—deed 5th Sept., 1870.‡	16 93

According to the facts.

I. W. GATES,
County Treasurer.

* Words and figures enclosed in parentheses in red ink in copy.
‡ Words and figures enclosed in brackets erased in copy.
† In pencil in copy.

STATE OF WISCONSIN, } ss:
County of Douglas, }

I do hereby certify that I have carefully compared the foregoing copy with the original tax certificate No. 118, of date Sept. 3, 1867, on file in my office, and that it is a correct transcript therefrom and of the whole thereof, including erasures, red-ink writing, and lead-pencil writing, all of which appear on the original in like manner as on said copy, except that the entry of the footing of the last column, 16.93, was erased in said copy by mistake, there being only one entry of said footing in the original and that not being erased.

124 Witness my hand and seal of office this 30th day of August, A. D. 1890.

[SEAL.] CHARLES LAGRO,
County Clerk.

125 DEFENDANT'S EXHIBIT G.

$95.55. *Tax Certificate, Sale of* 1877. No. 325.

STATE OF WISCONSIN, } ss:
County of Douglas, }

COUNTY TREASURER'S OFFICE,
SUPERIOR, *May* 8, 1877.

I, James Bardon, treasurer of the county of Douglas, in said State, do certify that I did, at public auction, pursuant to notice given as by law required, on this 8th day of May, A. D. 1877, sell to Douglas county the land herein described for the sum of ninety-five dollars and fifty-five cents, said sum being the amount due and unpaid for taxes, interest, and charges on said lands for the year of our Lord one thousand eight hundred and seventy-six; that said Douglas county of assigns will therefor- be entitled to a deed of conveyance of said lands in three years from this date unless sooner redeemed from such sale according to law.

Said lands are described as follows, with the sum for which each tract was sold set opposite to each description—that is to say:

126 In the town of superior. Sale of 1877. No. 325.
Balance, 83.57.
Assigned, redeemed, & dated. H. Hayes & H. Wallbridge.
July 14, 1880.
Assigned to Hiram Hayes, August 30th, 1878, as noted within.
Assigned to Horace Wallbridge & Hiram Hayes, undivided 15 acres in northeast of 23, 49, 14, 876.74.
July 14th, 1880.

GEO. F. HOLCOMB,
County Clerk.

127 STATE OF WISCONSIN, } ss:
County of Douglas, }

I do hereby certify that I have carefully compared the foregoing copy with the original tax certificate No. 325, of date May 8th, 1877,

on file in my office, and that it is a correct transcript therefrom an
— the whole thereof, including erasures, red-ink writing, and lead
pencil writing, all of which appears on the original in like manne
as on said copy, except such erasures as appears in the copy to have
been made with a knife in correcting said copy, none of which said
erasures with knife being found in the original. I further certify
that the three endorsements written on the back of this copy are
correct copies of all the endorsements upon said original and of the
whole thereof, and that I have carefully compared said copies with
the original endorsements.

Witness my hand and seal of office this 30th day of August, 1890.

[SEAL.]

CHARLES LAGRO,
County Clerk.

128

DEFENDANT'S EXHIBIT H.

The board of supervisors of the county of Douglas do ordain and determine as follows: That township 48 north, of range 14, be set apart and known as the town of Nemadji, and that the first election be held at the house of Thos. A. Taylor, on the military road, in said town, on the 5th day of April, A. D. 1859, for the purpose of electing township officers.

STATE OF WISCONSIN, }
County of Douglas, } ss:

I do hereby certify that I have carefully compared the foregoing copy of the record of the order and determination of the county board of supervisors of Douglas county, Wis., appearing recorded in the minutes of the proceedings of the county board of supervisors of such county at a meeting held upon the 10th day of March, 1859, as appears by said record of proceedings; and I further certify that it is a true and correct copy of said record of said order and determination and of the whole thereof.

Witness my hand and seal of office this 30th day of August, A. D. 1890.

[SEAL.]

CHARLES LAGRO,
County Clerk.

129

DEFENDANT'S EXHIBIT I.

The board of supervisors of the county of Douglas do order and determine as follows: That township 49 north, of range 14 west, be set apart and known as the town of Pokegama, and that first election be held at the school-house, in said town, on the 5th day of April, A. D. 1859, for the purpose of electing township officers.

STATE OF WISCONSIN, }
County of Douglas, } ss:

I do hereby certify that I have carefully compared the foregoing copy of the record of the order and determination of the county board of supervisors of Douglas county, Wisc., appearing recorded

in the minutes of the proceedings of the county board of supervisors of said county at a meeting held upon the 10th day of March, 1859, as appears by said record of proceedings; and I further certify that it is a true and correct copy of said record of said order and determination and of the whole thereof.

Witness my hand and seal of office this 30th day of August, A. D. 1890.

[SEAL.] CHARLES LAGRO,
County Clerk.

130 DEFENDANT'S EXHIBIT J.

Resolved, That the county clerk be, and he is hereby, authorized and required to assign and transfer to Hiram Hayes the outstanding tax certificates on his property, including those of the year 1878, to be received by him on account for legal services rendered to the county of Douglas at the request of the county board of supervisors in the suits of Stinson *vs.* County Clerk and others, Usher *vs.* County Clerk and others, —— *vs.* County Clerk and others, and in other matters of legal services and advice rendered by him to said county.

STATE OF WISCONSIN, } ss:
County of Douglas, }

I do hereby certify that I have carefully compared the foregoing copy of the record of a resolution appearing recorded in the minutes of the proceedings of the county board of supervisors of said county at a meeting held upon the 22nd day of June, 1878, as appears by said record of proceedings; and I further certify that it is a true and correct copy of said record of said resolution and of the whole thereof.

Witness my hand and seal of office this 30th day of August, A. D. 1890.

CHARLES LAGRO. [SEAL.]
County Clerk.

131 DEFENDANT'S EXHIBIT K.

The County of Douglas to Hiram Hayes, Dr.

1878.

August 1. For legal services in behalf of the county of Douglas on its special retainer in the suit of John P. Usher *vs.* Richard Relf, county clerk, and others, and Peter Reesor *vs.* Richard Relf, county clerk, and others, being equity actions involving the validity of a large amount of taxes belonging to said county..... $355 77

STATE OF MINNESOTA. } ss:
County of Hennepin, }

I, Hiram Hayes, being duly sworn, do depose and say that the annexed account is just and correct; that the same has not hereto-

fore been in form *been* presented to the county board of supervisors of said county, and that the same has been paid by being turned to account of affiant's taxes.

HIRAM HAYES.

Subscribed and sworn to before me this 25th day of November, A. D. 1879.

CHARLES B. LOENARD,
Notary Public, Hennepin County, Minn. [SEAL.]

Indorsement on the exhibit is: "Bill, H. Hayes. $255.77. Allowed November 29th, 1879. Settled by resolution of the board in tax certificates."

132 STATE OF WISCONSIN, } ss:
County of Douglas, }

I do hereby certify that I have carefully compared the foregoing copy with the original bill of Hiram Hayes for legal services on file in my office, including the affidavit of Hiram Hayes attached thereto, and that it is a correct transcript therefrom and of the whole thereof. I further certify that I have carefully compared the endorsement on the back of this copy of said bill and affidavit with the endorsement on the back of said original bill and affidavit, and that said copy is a true and correct copy of said endorsement upon said original bill and affidavit and the whole thereof.

Witness my hand and seal of office this 30th day of August, 1890.

[SEAL.] CHARLES LAGRO,
County Clerk.

133 Whereas it appears that the second set of indexes used in the office of the register of deeds of this county are worn out and the pages separate from the binding, and whereas the said volumes cannot be spared out of the register's office sufficiently long to have the same rebound, now, therefore—

Resolved, That the register of deeds is hereby directed and authorized to procure the proper blank volumes and to transcribe said indexes in *in* such blank volumes, and that after transcribing the same the old volumes shall be carefully preserved as the records of the county and the new ones shall be for general use until the legislature shall authorize the use of the copies as records.

Resolved, That the register shall receive as compensation for the performance of said work and other services to be rendered during the year 1872 the sum of six hundred dollars, which is hereby allowed him.

STATE OF WISCONSIN, } ss:
County of Douglas, }

I do hereby certify that I have carefully compared the foregoing with the original record of resolution adopted by the county board of supervisors of said county and recorded in the proceeding of the

meeting of said board held upon the 28th day of May, 1872, and that it is a correct and true copy of said original record of said resolutions and of the whole thereof.

Witness my hand and seal of office this 29th day of August, A. D. 1890.

[SEAL.] CHARLES LAGRO,
County Clerk.

134 COMPLAINANT'S EXHIBIT 5.

Adjourned Meeting. 202.

SATURDAY, *January* 19, 1861.

All the supervisors present.

Minutes of last meeting read and approved.

The matter of vacating the towns of Pokegama and Nemadji was discussed and the following order was offered:

The board of supervisors of the county of Douglas do order and determine as follows:

That the towns of Pokegama and Nemadji be vacated, the above order to take effect and be in force on and after the first day of April next, and the board do further order and determine that the next town meeting shall be held in the town of Superior to elect three supervisors that shall be the county and town board of supervisors.

The above order was offered by Denis Dean, seconded by Charles H. Kingsbury, and was carried unanimously.

The bill of Washington Ashton for six $\frac{27}{100}$ dollars was presented and allowed.

Resolved, That a county order be issued to C. H. Kingsbury for $6, for three days' attendance on county board.

Adjourned until Tuesday next at 10 a. m.

DENIS DEAN, *Chairman.*

135 STATE OF WISCONSIN, }
County of Douglas, } ss:

I, Charles Lagro, county clerk of said county, do hereby certify that I have compared the foregoing copy of proceedings of the county board and order thereof with the original record thereof in my office, and that the same is a true and correct copy of said proceedings and order and of the whole thereof.

Witness my hand and official seal this 2d day of September, 1890.

CHARLES LAGRO, [SEAL.]
County Clerk, Douglas Co., Wis.

136 COMPLAINANT'S EXHIBIT 7.

I hereby constitute and appoint Thompson Ritchie, of Superior, my deputy clerk, for me and in my stead to perform the duties of my office of clerk of the board of supervisors until otherwise provided.

Superior, Wisconsin, Jan'y 4th, 1869.

RICH'D RELF,
Clerk Board of Supervisors, Douglas Co., Wis.

Endorsements upon above appointment:

"Appointment of T. Ritchie, dep. clerk board supervisors. Filed in my office Jan. 4, '69.

RICH'D RELF, *Clerk.*

This appointment recorded this 12th day of June, 1869.

RICH'D RELF,
Clerk of the Board of Supervisors.

STATE OF WISCONSIN, }
Douglas County, } *ss:*

I, Charles Lagro, county clerk of said county, do hereby certify that I have compared the foregoing copies of appointment of deputy and endorsements thereon with the original appointment and endorsements on file in my office, and that the same are true copies of such originals and of the whole thereof.

Witness my hand and official seal this 1st day of September, A. D. 1890.

CHARLES LAGRO, [SEAL.]
County Clerk, Douglas Co., Wis.

137 COMPLAINANT'S EXHIBIT 8.

Supervisors' office, Douglas county, Wisconsin.

SUPERIOR, *June 12th,* 1869.

Pursuant to section 55, chapter 13, of the Revised Statutes of the State of Wisconsin, I do hereby appoint D. C. Relf, of Superior, Douglas county, Wisconsin, my legal deputy, to perform all the duties of my office of clerk of the board of supervisors of Douglas county, as and by law required of me, hereby revoking my former appointment of Thompson Ritchie, as such deputy, made January 4th, 1869.

Given under my hand and the seal of the board of supervisors of the county of Douglas this 12th day of June, 1869, at Superior.

RICH'D RELF,
Clerk of the Board of Supervisors,
Douglas County, Wisconsin.

Endorsements upon above appointment:

"Appointment of D. C. Relf, deputy clerk, & the revocation of the appointment of Thompson Ritchie." Filed in my office this 12th day of June, 1860.

RICH'D RELF,
Clerk of Board of Supervisors, Douglas Co., Wis.

Oath of office administered June 12, 1869.

THOS. CLARK, *Jus. Peace.*

138 STATE OF WISCONSIN, } ss:
County of Douglas, }

I, Charles Lagro, county clerk of the said county, do hereby certify that I have compared the foregoing copy of appointment of deputy and the endorsements thereon on file in my office, and that the same are true and correct copies of such originals and of the whole thereof.

Witness my hand and official seal this 1st day of September, A. D. 1890.

CHARLES LAGRO, [SEAL.]
County Clerk, Douglas Co., Wis.

139 COMPLAINANT'S EXHIBIT 9.

Special Meeting.

SUPERVISORS' OFFICE, *May 28th*, 1872.

All the members present. The minutes of the meeting of May 4th read and approved.

On motion, the following bills were allowed:

≠278.	Clerk circuit court, making returns of justice of peace.	$2 00
≠279.	Tennis & Daugler, to refund erren-ous tax..... ..	4 00
"280.	H. Nidecken & Co., assessors' blanks and rolls.....	29 00
≠281.	R. Whalen, ½ day'- work at Nemadji scow.....	1 25
≠282.	Jno. Salmon, ½.....	1 25
≠283.	Thos. Clark, survey of Washington park.....	5 00
≠289.	Jos. Bruno.....	6 00
≠284.	J. N. Clark.....	4 00
≠285.	J. D. Clark.....	1 00
≠286.	R. H. Relf, work upon court-house.....	1 00
≠287.	Thos. Clark, stationery for county judges' office	10 00
≠288.	Victor Desemval, ½ day's work, self and team.....	3 50
≠290.	H. Hayes, defraying expenses of Judge Clough to Madison for county.....	100 00
≠291.	H. Robbins, to refund expenses to Washington city in interest of county.....	382 97

Whereas it appears that the second *det* of indexes used in the office of the register or deeds of this county are worn out and the pages separate from the binding; and whereas the said volumes cannot be spared out of the register's office sufficiently long to have the same rebound: Now, therefore,

140 Resolved, That the register of deeds is hereby directed and authorized to procure the proper blank volumes and to transcribe the said indexes in such blank volumes, and that after transcribing the same the old volumes shall be carefully preserved as the records of the county and the new copies shall be for general use until the legislature shall authorize the use of the copies as records.

Resolved, That the register shall receive as compensation for the

performance of said work and other services to be rendered during the year 1872 the sum of six hundred ($600) dollars, which is hereby allowed him.

There being no further business, the board adjourned without day.

D. GEO. MORRISON, *Chairman.*

RICHARD RELF,
County Clerk.

STATE OF WISCONSIN, } ss:
Douglas County, }

I, Charles Lagro, county clerk of said county, do hereby certify that I have compared the foregoing copy of proceeding- of special meeting of the county board held May 28th, 1872, and order thereof with the original record thereof in my office, and that the same is a true and correct copy of said proceedings and order and of the whole thereof.

Witness my hand and official seal the second day of September, 1890.

[SEAL.] CHARLES LAGRO,
County Clerk, Douglas Co., Wis.

141 COMPLAINANT'S EXHIBIT 10.

Special Meeting.

SUPERVISORS' OFFICE, *July 2nd*, 1873.

Board met pursuant to adjournment.

Full board present. Minutes of meetings of June 27th & 30th read and approved.

On motion, the following bills were allowed:

# 675.	Jas. Syer, fees clerk of court	$5 90
676.	T. Riche, furniture for office	3 25
677.	Jno. Lynch, 4½ days' work sawing & piling wood of court-house	11 25

On motion, the following resolution was pas*t:*

678. Resolved, That Wm. H. Newton be, and he hereby is, allowed the sum of two hundred and ninety-eight $\frac{85}{100}$ dollars to refund expenses incurred at Madison in behalf of Douglas county.

679 to 684. Resolved, That the register of deeds be, and he is hereby, requested to complete the general index of conveyances, as authorized by the resolution of May 28th, 1872; also to collate and perfect the records of marriages and deaths, as required by law, and to thoroughly examine and correct the said index and copy in time for its legislation by the next legislature, and that he be allowed and paid, as compensation for the above and for all further incidental duties pertaining to his office for the year of 1873, the sum of six hundred dollars.

The bill of E. C. Clark, assignee of Louis Kiichlie, formerly

county clerk of the board of supervisors, for abstract of tax sales made in 1868 was disallowed as having been paid under his contract with the board May 4th, 1868.

142 There being no further business, the board adjourned without day.

D. GEO. MORRISON, *Chairman.*

RICHARD RELF,
County Clerk.

STATE OF WISCONSIN, } ss:
Douglas County, }

I, Charles Lagro, county clerk of said county, do hereby certify that I have compared the foregoing copy of proceedings of special meeting of county board held July 2nd, 1873, and order thereof with the original record thereof in my office, and that the same is a true and correct copy of said proceedings and order and of the whole thereof.

Witness my hand and official seal this 2nd day of September, 1890.

CHARLES LAGRO, [SEAL.]
County Clerk, Douglas Co, Wis.

143 COMPLAINANT'S EXHIBIT 11.

STATE OF WISCONSIN, } ss:
Douglas County, }

I, D. Geo. Morrison, register of deeds in and for said county, do certify that I have carefully compared this copy of "grantor's index" with the original in this office, and that said copy is a correct transcript from such original and of the whole thereof, being up to and including the 31st day of December, A. D. 1871, and that the same has been transcribed by me pursuant to the resolution of the board of supervisors of said county passed May 28th, 1872.

Witness my hand and seal of office this 9th day of November, 1875.

[L. S.] D. GEO. MORRISON,
Register of Deeds.

STATE OF WISCONSIN, } ss:
Douglas County, }

I, E. V. Mundy, register of deeds of said county, do hereby certify that I have carefully compared the foregoing copy of certificate of transcription of volume 2 of the General Index on file in my office with the original thereof found in the transcribed copy of said book, at the end thereof, after the completion of the entries under the letter "Z," and that the foregoing is a true and correct transcript and copy of such certificate and of the whole thereof. I further certify that the certified copy of the entry in said index of the tax deed to Hiram Hayes recorded Sept. 7, 1870, marked Exhibit 3 in the case of Land — River Imp. Co. *vs.* Bardon, was taken from the above-mentioned copy of such General Index.

Witness my hand and official seal this 2d day of Sept., A. D. 1890.

——— ———.

144 Circuit Court of the United States, Western District of Wisconsin.

THE LAND AND RIVER IMPROVEMENT COMPANY }
vs.
THOMAS BARDON. }

On this day the parties appeared before me, the undersigned examiner, by their counsel—A. L. Sanborn appearing for the complainant and W. F. Bailey and T. C. Ryan for the defendant—and the complainant produced as witness D. George Morrison, who testified as hereinafter set forth.

And the said D. GEORGE MORRISON, being duly sworn, testified as follow*ed:*

I live in Superior, and have lived here for about thirty-six years. I was register of deeds of Douglas county in 1870 and also in 1875. I was register of deeds of said county when volume "2" of the General Index of Grantors, in the register's office of said county, extending from the year 1858 to the year 1871—and a photographic copy of a part of one page of which is in evidence in this case—was made. The copy of said index now shown me was made under my supervision; it was written by Mudie Macara, the most of it, but partly by myself. The copy of said volume "2" was first used as a reference index, or index of grantors, in 1875; it was so used in said register's office on or about the time it was certified, Nov. 9, 1875. I think the copy was used, about as soon as it was certified to, in place of the original; now and then we had to refer back to the original. The original was kept in the vault of the register's office from and after the time the copy was so made and used; the certified copy was laid out upon the table or counter every day, as a reference book or general index, while the original was kept in the vault; this has continued to be done up to this date. I was register of deeds up to the 1st of January, A. D. 1888, and from January, 1857, with the exception of 1863, 1864, 1865, 1866, 1877, and 1878. In 1877 and 1878 I was about the office, in and out. During these two years, 1877 and 1878, this certified copy of the index was used in the same manner I have described—in place of the original; the original has been kept in the vault, day and night, since 1875, and the copy has been used in the daytime, as above described, and in the night it has been put in the vault for safe keeping.

Cross-examination by Mr. BAILEY:

I cannot exactly say when or why the original was used or referred back to at times; there were times when we came across entries that we compared with the original, and then we looked

back to the old one, and if mistakes had been made in comparing we corrected them; when we found that the copy was not an exact copy of the original we made it compare, but there were very few instances where we had to do so.

Q. Is it not a fact that during your experience in the office the older residents referred to the older index?

A. They did try to use the old index, but did not do it—not themselves; if they thought there was any error, I used to go myself and compare them.

145 Q. Did James Bardon have access to the old book and consult it during your term?

—. I don't know that he did; I don't know that he ever asked for it; it was not in a place that everybody would see it or ask for it.

Q. Is it not a fact that for 30 years James Bardon has been permitted to go into the vault and examine the records?

A. I don't think he has for that time. For about 15 years he and others, to my knowledge, have been permitted to go into the vault and examine all the records. He (Bardon) was county treasurer in 1875 or 1876. I had no occasion to compare the entries in the original and copy of S. E. ¼ sec. 28, 49, 14, until my attention was called to them a few days ago.

My deputy from 1870 to 1876, inclusive, was, I think, James S. Ritchie, but I am not sure that he was there all the time. From 1870 to 1876 I was also town clerk and dealing in real estate. I did not spend most of my time in the office; I had a deputy or clerk.

Q. Who compared the copy of the index with the original?

Objected to as immaterial.

A. I went over part of it and the rest by M. Macara and Thos. Clark; I went over the most of it. The first five entries on the page where this tax deed was originally indexed are in my hand; the 11th and 12th are in Mudie Macara's hand; the 9th is in Ritchie's hand. This is the one in question. On the 2nd page it is in the same hand except the page where recorded and "H. Hayes" and "1.00" is in my hand. The Book "1" of "tax" is also in my hand.

Q. Now, see, Mr. Morrison, if you can find any other place in the index where he makes an "S" in the same manner in which he has made it there?

A. I have seen it somewhere; I don't know where. It was there when I put in book and page. I have often seen him make that "S." There is one of the same kind of S's under the letter "G" in the same index under date of Aug. 18, 1870. There are 19 "S's" of the same kind on the left-hand side of a page under letter "S," from March 23, 1866, to April 8, 1867. On the right-hand side of the same page there are seven such "S's." Some of these "S's" are almost exactly the same as the one in question, while others, though of the same style, are more ornamental. In the entry under "S," of April 17, 1867, is one of his "S's" almost exactly like it.

I wa- town clerk off and on for seven years up to 1874, and also assessor for three or four years.

Redirect:

During the time I was town clerk and assessor and real-estate dealer I was in the register's office almost every day and for nine or ten months of the year—that is, all of the working time or working hours for such nine or ten months was spent in the register's office and the rest of the year out of the office, on the average. I spent at least 9 months in the register's office every year, counting the days as full days.

D. GEO. MORRISON.

146 And the said defendant produced as a witness JAMES S. RITCHIE, who, being duly sworn, testified as follows:

I reside in Superior and have for twenty-five years, about; lawyer and real-estate business; was deputy register of deeds for a number of years off and on. I am acquainted with a certain book in office of register of deeds of Douglas county called a copy of vol. 2 of Grantors' Index. I remember its being made by Mr. Macara. Since that was made I have been in the law and real-estate business and have had occasion to examine a good many titles for myself and others; a fair-sized business. Whenever I went there to make an abstract I invariably referred to the original book. My reason was that I never considered the copy as good as the original, and I noticed some inaccuracies once in a while, but nothing very extended. The original could always be got by any one that wanted it and knew about the other being a copy.

Cross-examined:

The copy was kept in the register's office in the place where all the index books—grantor and grantee—were kept, while the original was laid away so as not to be used commonly. Persons using the index who did not know it was a copy would have no occasion to use the original or ask for it. So far as I know, all the entries are in the copy which appears in the original.

JAMES S. RITCHIE.

And the defendant produced JAMES BARDON (recalled) as a witness, who testified as follows:

I have been already sworn in this case. I am engaged mainly in the real-estate business at Superior, Douglas county; have been in that business here for twenty-two years. I know the copy of General Index, vol. "2," in the register's office here. I have (I think always) used the original instead of that copy. I have done a large real-estate business for myself and others; I think the largest of any one here; examined the titles in almost every transaction myself until within the last four or five years. Before the last four or five years I was in the office of the register of deeds here nearly every day; it might be safer to say four or five times a week. I got the original general index by going into the vault where the rest of the records were and taking it the same as I would any other book. They

were all kept in the vault until five or six years ago, and the citizens whom the register knew had access to the vault. From the years 1875 to 1880, inclusive, D. Geo. Morrison, James S. Ritchie, and Mudie Macara were in attendance at the register's office, one or other of them. There was not business in the office enough to employ one man. During those years the books in the register of deeds' office, including the original index book, were all kept in the vault, and the original index was the one usually used during those years by persons examining titles there. I know of no restriction having been placed by the register of deeds against using the original: People preferred to use the originals because they were more apt to be accurate, more reliable, and the handwriting was easier to read than that in the copy.

147 Question. Do you know, during those years, of inaccuracies being found in the copy?

—. I remember that it was found at one time that the copy was defective in not giving a brief description of the land in some places and this was amended. This was long after the certificate of the register was attached. Amendments were being made for several months after that, off and on. I think that was done by authority of the register of deeds.

Cross-examination:

When I desired to use one of the general indexes I would bring it out upon a desk or counter in the main office. I think the books were seldom taken out of the vault by the register. He set the index books out more frequently than the other books. People who used them would leave them where they found them. There was not enough doing to set out the indexes part of the time. These people I speak of who used these indexes were generally well versed in matters of land titles—generally experts in that line. In 1870 the record books of deeds and mortgages in the register's office were numbered by letters. Vol. "I" of Ordinary Deeds was begun some time after 1880. Down to three or four years ago there was no vol. 14 of Deeds in the register's office, and I don't know as there is yet. The records of tax deeds are numbered numerically—1, 2, 3, &c. The original entry in the general index of the tax deed recorded vol. "I" of Tax Deeds, pages 378 & 379, is in the handwriting of James S. Ritchie down to the end of the description of the land.

Redirect:

Q. During the years from 1875 to 1880, inclusive, what was the condition of the original index as to its being in a good state of preservation—fit for use?

A. It was legible. The backing was fairly good. The book was but little shattered.

JAMES BARDON.

148 DEFENDANT'S EXHIBIT M. Offered in Evidence Nov. 26th, 1890.

I.

It is admitted that A. A. Hood was elected town clerk of the town of Superior at the annual town meeting in April, 1866; that he qualified and entered upon the discharge of the duties of said office, but that, being sick with consumption, he was unable at times to attend to his duties as such town clerk and was assisted therein by James S. Ritchie, who acted as town clerk *pro tem.* in place of said A. A. Hood, and that, in order to relieve the said Hood and to assist him, he, the said Ritchie, signed the tax warrant attached to the tax roll of 1866, found in the county clerk's office of Douglas county, as follows: "James S Ritchie, *pro tem.* clerk of said town," meaning by said town the town of Superior, in Douglas county, Wisconsin, as appears from said tax warrant, and that said tax roll is in said James S. Ritchie's handwriting.

II.

It is admitted that a copy of a newspaper called "The Superior Chronicle" and bearing date Superior, Wisconsin, Tuesday morning, March 22nd, 1859, containing a publication of a copy of the order and determination of the county board of supervisors of Douglas county, made March 10th, 1859, purporting to create the towns of Pokegama and Nemadji is on file in the town clerk's office of the town of Superior, endorsed as follows: "Filed April 6, 1859, C. T. Whittlesey, town clerk," and that W. G. Tubbs, town clerk of said town of Superior, if called, would so testify.

III.

It is further admitted that James Syer was the register of
149 deeds of Douglas county during the years 1877 and 1878.

The foregoing admissions numbered 1, 2, and 3 are made by the plaintiff to save the time and expense of taking proofs as to the same and put in evidence by the defendant, plaintiff objecting to the same for irrelevancy and immateriality and reserving all objections thereto on those grounds.

PINNEY & SANBORN,
Compl't's Sol'rs.

150 STATE OF NEW JERSEY:

Certificate of organization of Land and River Improvement Company, a corporation organized under and in pursuance of the acts of the legislature of the State of New Jersey in such case made and provided.

We, George S. Baxter, Edward C. Buchanan, and Charles S. Lincoln, having associated ourselves into a company for the purposes hereinafter expressed, do make this certificate in writing of our organization and set forth:

First. The name assumed to designate this company and to be used in its dealings and business is "Land and River Improvement Company."

Second. The place or places in this State or elsewhere where the business of said company is to be conducted are the township of Shrewsbury, in the county of Monmouth and the State of New Jersey, and the States of Wisconsin and Minnesota.

Third. The objects for which the said company is formed are the purchase, improvement, and sale of lands, buildings, and docks, the mortgaging, renting, leasing, and otherwise disposing of the same, the reclamation and improvement of submerged lands, the construction of buildings, wharves, and docks, the construction, maintainance, and operation of works to supply water, gas, steam power, electric light, telegraphs, and telephones for or upon said lands, buildings and docks, and other premises adjacent thereto, the transportation of goods, merchandise, and passengers within such lands and premises, and any wholesale or retail business to be carried on, either in whole or in part upon the same.

Fourth. The portion of the business of said company
151 which is to be carried on out of this State is the same as that to be carried on within this State, to wit: The purchase, improvement, and sale of lands, buildings, and docks, the mortgaging, leasing, renting, and otherwise disposing of the same, the reclamation and improvement of submerged lands, the construction of buildings, wharves, docks, the construction, maintainance, and operation of works to supply water, gas, steam power, electric light, telegraphs, and telephones for or upon such lands, buildings and docks, and other premises adjacent thereto, the transportation of goods, merchandise, and passangers within such lands and premises, and any wholesale or retail business to be carried on, either in whole or in part, upon the same.

The name of the township and county in which the principal part of the business of said company within this State is to be transacted is the township of Shrewsbury and county of Monmouth.

Fifth. The total amount of the capital stock of such company it five hundred thousand dollars.

The amount with which they will commence doing business is three thousand dollars. The number of shares into which the said capital stock is divided is five thousand shares of a par value of one hundred dollars each.

Sixth. The names and residences of the stockholders and the number of shares held by each are as follows:

Names.	*Residences.*	*No. of Shares.*
George S. Baxter.....	New York city, N. Y.....	10 shares.
Edward G. Buchanan....	City of Yonkers, N. Y.....	10 shares.
Charles S. Lincoln	New York city, N. Y.....	10 shares.

Seventh. The period at which said company shall commence is the twentieth day of April, 1883, and the period at which it shall terminate is the twentieth day of April, 1933.

In witness whereof we have hereunto subscribed our names.
GEORGE S. BAXTER, 10 shrs.
152 EDWARD G. BUCHANAN, 10 shrs.
CHARLES S. LINCOLN, 10 shrs.

In presence of—
ARCHIBALD C. WEEKS.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on the twentieth day of April, in the year one thousand eight hundred and eighty-three, before me, Archibald C. Weeks, a commissioner of the State of New Jersey, duly appointed to take the acknowledgements and proofs of deed, &c., in the State of New York, personally came George Baxter, Edward G. Buchanan, and Charles S. Lincoln, who I am satisfied are the three persons described in and who executed the foregoing certificate, and, I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written at said city of New York.

[L. S.] ARCHIBALD C. WEEKS,
A Commissioner of Deeds for the State of New Jersey in New York.

Endorsed: "Received in the office of the clerk of Monmouth Co. on the 21st day of April, A. D. 1883, and recorded in Liber A of Incorporations, page 337, &c. Jos. C. Arrowsmith, clerk."

153 J. D. Ray and wife to James Bardon. } No. 10161. Quitclaim Deed. Filed for Record March 18th, 1878, at 10 o'clock a. m.

This indenture made this sixth day of March in the year of our Lord one thousand eight hundred and seventy-eight between J. D. Ray and Caroline E. Ray his wife of Duluth Minnesota parties of the first part, and Jas. Bardon of Superior Wisconsin party of the second part. Witnesseth, that the said parties of the first part, in consideration of the sum of one dollar to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, release and quitclaim, to the said party of the second part, his heirs and assigns forever, all their right, title, interest, claim or demand, in and to the following piece or parcel of land, lying and being in the county of Douglas and State of Wisconsin, to wit: The southeast quarter of section twenty-eight (28) town. forty-nine (49) north range fourteen (14) west containing 160 acres more or less. To have and to hold, the above quitclaimed premises, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining,

to the said party of the second part, his heirs and assigns forever.

154 In testimony whereof the said parties of the first part hereunto set their hands and seals the day and year first above written.

JAMES D. RAY. [SEAL.]
CAROLINE E. RAY. [SEAL.]

Signed, sealed, and delivered in presence of—
R. C. RAY,
WILLIAM A. GULICK,
Witnesses.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Be it known that on this 6th day of March, A. D. 1878, personally came before me Jas. D. Ray and Caroline E. Ray, his wife, to me personally known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same freely and voluntarily.

[L. S.] WILLIAM A. GULICK,
Notary Public, St. Louis Co., Minn.

Grantors' Index.

No. 10161.
Date of filing, March 18th, 1878, 10 a. m.
Grantor, Ray, J. D., *et ux.*
Grantee, James Bardon.
Instrument, quitclaim deed.
Description, S. E. ¼ section 28, town. 44, range 14.
Where recorded, Book N, page 36–3.
To whom delivered, Jas. Bardon.
Recording fee, 50.

155 STATE OF WISCONSIN, } ss:
Douglas County, }

I, J. F. Ware, register of deeds in and for said county and State, do hereby certify that I have carefully compared the annexed copy of deed, wherein James D. Ray & wife appear as grantors and Jas. Bardon as grantee, with the original record thereof now in my office and custody, and that the same is a true copy of such original record and of the whole thereof. I further certify that the copy of Grantor Index No. 3, following above-mentioned copy of deed and thereto attached, is a true & correct copy of such index as far only as the above-mentioned deed is concerned.

Witness my hand and official seal this 17th day of December, A. D. 1890.

{ Seal of the Register of Deeds of Douglas County, Wisconsin, A. D. 1854. }

J. F. WARE,
Register of Deeds, Douglas Co., Wis.
By GEO. H. DETLING, *Deputy.*

156 COMPLAINANT'S EXHIBIT NO. 6.

TOWN CLERK'S OFFICE, *April* 2, 1861.

Minutes of town meeting held at the place of last Tuesday, April, 1861.

Denis Dean, ch'm'n; Owen Sheridan, Sam'l Smith, A. A. Hood, t'wn cl'k, inspectors.

The meeting having been called to order, a synopsis of the expenditures of the town of Superior was presented (for the last fiscal year) and was approved and a detailed statement ordered printed.

Financial statement of the town of Superior at a meeting held on the 26th day of March, 1861.

The board audited the following bills, to wit:

There has been expended for the improvement of roads, streets, and avenues in said town for the past year the sum of $2,185.87.

Second street		$856 87
Third "		47 70
Fourth "		15 70
Fifth "		21 10
Sixth "		18 00
Richardson avenue		24 75
Robertson "		18 75
Thompson "	R. G. Coleman and others	225 00
Baker "		33 00
Becker "		214 50
Nettleton "		30 50
Stinson "		97 00
Amount advanced Henry Smith on contract for constructing sidewalk on Nettleton avenue, &c., as per contract on file		560 00
157 Amount paid for cleaning snow from sidewalks		23 00
Amount paid on contracts entered into by former board, the sum of		1,516 82
To J. B. Fraiser, Sixth street		665 00
James Newton, St. John's avenue		253 34
Currier & Prendergast, Becker avenue		74 00
John Smith, Nettleton avenue		124 00
John Garritz, St. Croix road		400 48

There has been paid for the support of the poor in said town the sum of $188.89.

For H. Murphy	$20 00
" Peter Burnham's family	138 91
" Mrs. Danielson	10 00
" Mrs. Veule	9 98
" Joseph Dennis	10 00

The following miscellaneous accounts were allowed:

Denis Dean for stationery		$10 00
A. B. Burbank " furniture		5 00
John Baxter " furniture		10 00
A. A. Hood " services as clerk		6 00
A. Gallagher " office stove		11 50
A. A. Hood, town clerk		5 00
H. Murphy, overseer of highways		20 00
I. F. Holt, wood and hauling		7 34
T. Ritchie, clerk of elections		3 00
J. Meyer, rent of room		5 00
R. N. French, furniture		4 35
J. S. Ritchie, supervisor		22 50
Denis Dean, stationery		5 50
Washington Ashton, advertising & printing		14 50
Richard Relf, inspecting work of roads		5 00
158 J. T. Moran, refreshments at town election, '60		5 00
Owen Shendan, supervisor		18 50
J. O. Jones, service as constable		12 00
Corcoran & Bright, rent of office		45 00
Denis Dean, supervisor		39 00
O. Sheridan, $8, inspecting road-work		8 00
A. A. Hood, town clerk		25 00
J. M. Basnett, superintendent of schools		5 00
T. Ritchie, clerk of election		3 00
J. T. Smith, inspector of road-work		3 00
J. B. Fraiser, assessor		64 00
E. T. Whittlesey, clerk of election		3 00
Same, draining contract		4 00
A. A. Hood, town clerk		39 00
" " " " "		25 00
Owen Sheridan, supervisor		15 00
Same, inspecting work		8 00
A. Galligher, tax refunded		2 00
James Collier, wood for office		3 00
Washington Ashton, printing		2 50
D. M. Payton, stationery for treasurer's office		10 00
A. A. Hood, town clerk		20 00
Same, extra services		50 00
Denis Dean, supervisor		1 50
Owen Sheridan, supervisor		8 50
William Cromwell, clerk of election		3 00
E. B. Strong, returning delinquent taxes		75 00
" " " extra taxes		20 00
A. A. Hood, town clerk		30 00

Statement of the Fiscal Concerns of the Town of Superior on the 26th Day of March, A. D. 1861.

Amount unexpended April 5th, 1860	$3,170 32
" raised " " "	2,000 00
" " May 12th, "	2,790 00
" received on licenses	15 20
	7,975 52
Amount of expenditures present year	4,573 27
Balance unappropriated	3,402 25
Amount road fund on hand	2,494 44
" poor " " "	253 05
" miscellaneous	654 76
	$3,402 25

——— ———,
——— ———,
Supervisors.

A. A. HOOD,
Town Clerk.

There being a vacancy in the board of inspectors, Mr. Samuel Smith was chosen to fill said vacancy.

The following amounts were then levied for the ensuing year:

159	For support of poor	$1,000 00
	" roads	3,000 00
	" miscellaneous purposes	1,200 00
		$5,200 00

On motion, it was resolved that but one assessor be elected.

On motion, it was resolved that but one constable be elected.

On motion, it was resolved that but one overseer of highways be elected.

Resolved, That the ordinance passed April, 1860, entitled "An act to restrain swine," be in force the year round.

Mr. E. C. Clark offered resolution to adjourn from 12 to 1 o'clock for dinner.

Mr. Dean would not allow the resolution to be acted upon.

After the above proceedings were had the town hall was cleared and the polls were opened for the election of town and judicial officers.

Upon counting the votes it was found that the whole number polled was one hundred and thirty-six—136; of which, for the associate justice of the supreme court, Orasamus Cole (Rep.) received sixty-six.

For county judge, I. W. Gates (Rep.) received sixty-six; William Mann (Dem.) received fifty-eight.

For chairman of board of supervisors, Washington Ashton received seventy-eight; for John T. Smith, fifty-five.

For supervisors, L. F. Wheelock received sixty-six; James Edwards received seventy-two; Leon Bertrand, on both tickets, one hundred twenty-six.

For town clerk, A. A. Hood received eighty-one; William Conner received fifty-two.

For treasurer, D. Schutte received seventy-five; J. W. Mills, sixty.

For assessor, E. B. Strong received eighty-two; C. S. Freeborn received fifty-two.

160 For superintendent of schools, J. M. Barnett (on both tickets), one hundred thirty-four (134) votes.

For justice of the peace, L. F. Wheelock received sixty-nine; J. T. Morgan received seventy; O. Lemerise received sixty-four; Chas. Lord received sixty-four.

For constable, Patrick Carey received sixty-six; Jerry Martel received eight; Pat. O'Brien rec'd four; F. Prendergast received five; L. Slayton received two.

For overseer of highways, John Ryan rec'd 65; Carl Claussen received 13.

For sealer of weights and measures, James Newton received seventy; C. Hohly received sixty-three.

Whereupon we, the inspectors of the election, do certify that we have determined that the above-named Orsamus Cole is elected associate judge of the supreme court; I. W. Gates, county judge; Wash'on Ashton, chairman of town board supervisors; James Edwards and Leon Bertrand, supervisors; A. A. Hood is elected town clerk; D. Schutte, town treasurer; E. B. Strong, assessor; J. M. Barnett, superintendent of schools; L. F. Wheelock and T. Morgan, justices of the peace; Patrick Carrey, constable; John Ryan, overseer of highways; James Newton, sealer of weights and measures.

Witness our hands this second day of April, 1861.

____ ____,
____ ____,
Inspectors.

Attest: A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 10, 1861.

Pres't: W. Ashton, James Edwards, Leon Bertrand.

First Meeting of New Board.

On motion, the following bills were allowed and ordered paid, to wit:

161	D. Schutte, provisions for Seranlt (poor).....	$15 00
	D. Dean, stationery for clerk's office.....	13 80
	Three inspectors, D. Dean, Samuel Smith, O. Sheridan, $3 each.....	9 00
	Two clerks of election, Richard Relf and A. M. Hood.....	6 00

Resolved, That the clerk of this board invite the town clerk of the late town of Namadji, in writing, to forthwith hand over — the clerk of this town of Superior all books and papers appurtaining to his said office. The petition of 103 signers for building wagon road from Connor's point, in said county, to the northwest end of Second street, in the late town of Superior, was accepted by the board.

On motion, $75 were allowed and ordered paid from poor fund to Maurice Florin for board of Mrs. Wolcott and child three months.

Adjourned to Monday, 15th April, 1861.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April 15th*, 1861.

Pres't: James Edwards, W. Ashton, Leon Bertrand.

Minutes of last meeting read and approved. The board then proceeded to examine the books and accounts of the late town of Pokegema, after which they were accepted and filed in this office. On motion of W. Ashton, that a competent person be sent to examine bridges on the military roads as far out as the State line and report to the board, carried. Allowed bill of John Morgan for refreshments furnished on election day, April 2, 1861, $5.00; also $25.00 to Wm. H. Connor for making return and extra delinquent taxes in Pokegama.

Adjourned without day.

A. A. HOOD,
Town Clerk.

162 TOWN CLERK'S OFFICE, SUPERIOR, *April* 29, 1861.

Pres't: W. Ashton, James Edwards, Leon Bertrand.

Minutes of meeting of April 5th read and confirmed.

On motion of Mr. Edwards, it was ordered that District Attorney George W. Peny be authorized to get books, papers, and the balance, $209.25, in orders from James Wright, treasurer of the late town of Nemadji, and hand over to this board.

On motion — Mr. Edwards that a sum not to exceed $500 be appropriated for building wagon roads from Connor's point to N. W. end of Second street, carried.

The following bills were audited and ordered paid:

Geo. Holcomb & Co., provisions for P. Bushman's family	$14 12
D. Schutte, provisions for Sangloy	17 10
" " " Serault's family	7 50
S. Dumphy, " " "	16 50
W. Ashton, publishing annual statement	12 00

On motion, it was ordered that from the present time Serault's family (poor) should receive $10 per month, and Peter Bushman (poor) $8.00 per month, and Mrs. Wolcot and child (poor) $25.00.

Adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *May 6th*, 1861.

Pres't: W. Ashton, James Edwards.

Minutes of April 29th read and approved. On motion, the following bills were allowed and ordered *apr.*:

163	Mrs. Florin, 1 month's board Mrs. Wolcott and child to May 6, at $25 per month	$25 00
	Rich'd Bardon, work on Second street	22 00
	A. A. Hood, on salary	14 00

There being no further business, the board adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *May* 22, 1861.

Present: W. Ashton, J. Edwards, L. Bertrand, supervisors.

The minutes of last meeting, May 6th, were read and approved.

The following bills were allowed and audited, and it was resolved that order issue in payment as follows:

	To W. Ashton, supervisor, check	$4 50
	J. Edwards, supervisor, three meetings	4 50
	L. Bertrand, supervisor, three meetings	4 50
	To L. Bertrand (poor purposes) for Serault	3 00
	" P. E. Bradshon (" ") " I. Dennis	18 00
	" R. Relf, roads, surveying road to Connor's point	8 00
	" A. A. Hood (misc.), salary	28 00
	J. Barton, " office desk	10 00

The town board of Superior do order and determine that the plat and line of road offered this day by R. Relf be, and it is hereby, located as a town road as follows: Beginning at a point on the west bank of the Nemadji river in the center of Second street to its intersection with center of Bay street, Superior City, thence along the center of Bay street to its intersection with the section line between sections 13 and 14, township 49, R. 14; thence north along said line 350 feet; thence north 48 W. 2,575 feet to the center of Center street, Connor's point; thence along the center of
164 Center street to the end of Connor's point. The town board of Superior do order and determine that a bridge be built on or near the corner of Second avenue and Bay St., Superior City, so as to admit of the passage of teams up said avenue.

Resolved, That some suitable person or persons be employed to repair the sidewalk and drain on Second street near the intersection of Thomson avenue; also Nettleton avenue. Nemadji orders to the amount of $209.25 as received from D. Schultte, town treasurer, being balance in hand of James Wright, late town treasurer of Nemadji, were canceled and burned.

Adjourned till June 14, 1861.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *June* 14, '61.

Present: W. Ashton, J. Edwards, supervisors.

The minutes of last meeting, May 22, were read and approved. The following bills were allowed and ordered to be paid in town orders:

M. Florin (poor) for Mrs. Wolcott	$25 00
John Ryder (roads), overseer, 3 days	7 50
John Kayer, working on 2d Ave. & Bay St	6 00
John Stynch, " " " "	4 00
John Scott, " " " "	1 00
John Nutt, " " " "	4 00
Lars Linrott, " " " "	2 00

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *June* 26, 1861.

Present: W. Ashton, J. Edwards, supervisors.

The minutes of last meeting, June 14th, were read and approved. The following bills were presented, audited, allowed, town orders to issue for payment of same:

165	P. E. Bradshaw (poor) for I. Dennis	$10 00
	W. W. Perry (poor) for services I. Dennis	20 00
Chas. Bhlin (poor) for Serault		10 00
J. P. Bernett for Mrs. Wolcott		3 15
To R. Bardon (roads), work on Second St		18 00
	William Butler (roads), work on Nettleton Ave	2 00
	John Ryan (misc.), overseer services	26 00
	Connor & Bertrand (roads), Bay street and Second Ave.	7 16

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *July 8th*, 1861.

Present: W. Ashton, J. Edwards, L. Bertrand, supervisors.

The minutes of last meeting of June 26th were read and approved. The following accounts were presented, audited, and allowed, town orders to issue in payment of the same:

R Coburn (poor) for Mrs. Bushman	$46 40
James Newton (poor) for Mrs. Wolcott	5 35
R. W. French (poor) for Mrs. Wolcott	2 25
J. R. Bennett (poor) for Mrs. Wolcott	1 10
Maria Florin (poor) for Mrs. Wolcott	25 00
C. Simmonds (poor) for Mrs. Wolcott	4 00
R. Bardon (roads) on 2d St. walks	20 00
John Ryan, two days' work on 4th St	6 25

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *July* 19, 1861.

Present: W. Ashton, J. Edwards.

The minutes of the last meeting, July the 8th, were read and approved. The following accounts were presented, audited, and allowed, town orders to issue for the same:

166 To Howard & Payton, three bills, in total, $109.50, for the following purposes: Poor, for Mrs. Wolcott, $300; poor, for Serault, $10.00; (misc.) Brown, for office, $1.00.

Misc. W. Ashton, two days on equalize, $3.00
" A. A. Hood, " " " " 3.00 } separate items.
" E. B. Strong, " " " " 3.00

Roads—On road to Howard's mill, $95.00; to James Bardon, roads, work on Second-street walk, $16.00.

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Aug.* 17, 1861.

Present: J. Edwards, W. Ashton.

The minutes of last meeting were read and approved, on which the following accounts were presented, audited, and allowed, town orders to issue for the same:

To James Bardon (roads), work of Second street..... $18 00
" Mrs. Wolcott (poor), for sawing her wood..... 1 00

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Aug.* 24, 1861.

Present: W. Ashton, J. Edwards.

The minutes of last meeting were read and approved.

Resolved, That town orders, amount $21.00, to issue to A. A. Hood, payment on account of salary.

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Aug.* 31, 1861.

Present: W. Ashton, J. Edwards.

The minutes of last meeting read and approved. The following bills were presented and allowed, town orders to issue in payment of same:

James Bardon (roads), work on Second-St. walks..... $4 00
John Sarn (roads), " " " " " 29 00

Adjourned.

A. A. HOOD,
Town Clerk.

167 TOWN CLERK'S OFFICE, SUPERIOR, *Sept.* 6, 1861.

Present: W. Ashton, J. Edwards.

The minutes of last meeting were read and approved.

Resolved, That town orders, amount $3.00, issue for L. Burtrand, two meetings of Superior.

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Sept.* 19, 1861.

Present: W. Ashton, J. Edwards.

The minutes of last meeting were read and approved. The following bills presented were allowed, town orders to issue for payment of the same:

To W. Ashton (poor), for Mrs. Wolcott	$18 60
James Newton (poor), for J. Dennis	20 35
A. A. Hood (misc.), salary to Sept. 2	20 66
R. G. Coburn (roads), bill of plank for 2d-street walks, 5,884 feet	117 67
Howard & Payton, to walks on road to Connor's point	78 80

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Oct.* 20, 1861.

Present: W. Ashton, J. Edwards.

The minutes of last meeting were read and approved.

Bill of E. B. Strong, assessor, presented and allowed his services, $400.00, 100 days at $4 per day, town order to issue on payment of same.

Adjourned.

A. A. HOOD,
Town Clerk.

Received from E. B. Strong, assessor, his return of the assessed value of Douglas county in real estate and personal property; amount total, $507,925.82; to which is added State equalization, $81,326.33, which makes the whole amount of real and personal estate subject to taxation for the year of 1861, $589,252.15; extentions to be made on the same, to wit, for county purposes, rate, 20 mills; town purposes, 10 mills; State, 2 mills; school, 1½ mills; special, 1½ mills; in all, 34⅔ mills.

168 TOWN CLERK'S OFFICE, *Nov.* 13, 1861.

Present: W. Ashton, J. Edwards.

The minutes of last meeting were read and approved. The following accounts were presented, audited, and allowed:

To Joseph Dennis (poor), payed him	$27 00
Mr. Greenwood (poor) for Mrs. Wolcott	12 00
D. Schutte (poor) for Mrs. Wolcott	4 80

G. F. Hilcomb & Co. (poor) for Mrs. Wolcott	3 70
Mrs. Wilcott (poor) for Mrs. Wolcott	30 00
Joe Dennis (poor) for Joe Dennis	20 00
Mrs. Bushman (poor) for Mrs. Bushman	5 05
R. G. Coburn (poor) for Mrs. Bushman	71 60
John Coteaa (poor) for Mrs. Wolcott	36 00
R. G. Coburn (poor) for Mrs. Wolcott	25 57
D. Schutte (roads) on Second street	2 00
R. G. Coburn (roads) on Second street	15 17
Chase & Kimble (roads) on Second street, plank	174 02
D. Schutte (misc.)	16 20
A. A. Hood (misc.), salary	20 83

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Dec.* 19, 1861.

Present: W. Ashton, J. Edwards.

The minutes of last meeting, Nov. 13th, read and approved. The following accounts were presented, audited, and allowed:

To Joseph Dennis (poor), paid him	$25 00
A. A. Hood (misc.), salary	10 00
A. A. Hood (misc.), balance due him Dec. 2	31 66
J. D. Howard (misc.), stationery town treasurer	2 73
E. W. Anderson (misc.), stationery	3 00
W. Cornwell, services rendered working extension of the taxes for town clerk	130 00

The taxes having been duly extended on the roll and prepared for the town treasurer according to agreements of law, the said town treasurer, Dietrick Schutte, was duly *ra*tified and on the — day of December given bonds with E. W. Anderson and J. R. Burnett in the sum of $40,000 for the collection of taxes hereby rendered due, $19,854.87, said bonds being double the amount of the taxes. The town treasurer, Dietrick Schutter, is hereby charged the sum of $19,854.87, total aggregate amount of taxes year 1861, $19,854.87, due to Douglas county, Wisconsin, which same he is required to account with the treasurer of said county; the aforesaid taxes were extended and declared for the following: County purposes, 20 mills, $11,454.75; town purposes, 10 mills, $5,727.37; State purposes, 2 mills, $1,145.47; school purposes, 1⅓ mills, $763.64; special purposes, 1⅓ mills, $763.64; total, $19,854.87; due from Superior proper taxes, $13,417.10; due for Superior additions, $1,610.72; due for lands, $4,827.05; aggregation amount taxes of year 1861, $19,854.87.

169 In making extension of taxes the *land* requires that fractions be rejected. The total equalized value of personal and real estate is $589,252.15, —at the rate of 34⅔ mills gives taxes $20,427.38; therefore the operation creates a loss of $572.51, which is duly set forth and accounted. (See tax roll of 1861, page 673.)

Received from town treasurer of Superior the sum of $1,185.16 in

town order of the following townships: Superior, 565.11; Pokegama, 466.55; Namadji, $153.50, which were examined, cancelled, and burned. The board herewith appointed William Kimball town supervisor to supply vacancy occasioned by L. Bertrand, absent.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Feb.* 7, 1862.

Present: W. Ashton, J. Edwards.

The minutes of last meeting, December 19th, were read and approved. The following accounts were presented and allowed, orders to issue for the same:

To W. Ashton (misc.), for printing treasurer's receipts.....	$20 00
W. Ashton (misc.), 12 meetings as supervisor.....	18 00
J. Edwards, 12 meetings...	18 00
J. Dennis (poor), self and family.....	12 00

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Feb.* 24, 1862.

Present: W. Ashton, J. Edwards.

The last minutes, meeting Feb. 7th, were read and approved. The following bills were presented, audited, and allowed, town orders to issue for same:

To D. Schutte (misc.), rent of town clerk's office, May 1, 1861, to May 1, 1862, $25.00; to William Cromwell (misc.) for services rendered on town clerk's books and papers, recording matters, $88.76; to A. A. Hood (misc.) for 2 months' salary from the 2d of December, 1861, to 2d of February, 1862, at $21.66, $43.32; to *to* George F. Holcomb & Co. (poor) for butter to Mrs. Wolcott, $4.00; to D. Schutter (poor) for goods to Mrs. Bushman, $10.00; to F. Pendergast for work on Howard's road, $7.00; to P. E. Bradshaw and Co. (poor), goods to Mrs. Bushman & family, 11.64; to P. E. Bradshaw and Co. (poor), goods to Mrs. Bushman & family, 10.00; to P. E. Bradshaw and Co. (poor), goods to Mrs. Wolcott, 17.45; to E. C. Becker, to appropriate to the support of the poor, $50.00.

170 TOWN CLERK'S OFFICE, *March* 25, 1862.

Annual Meeting.

Present: W. Ashton, J. Edwards.

The minutes of last meeting were read and confirmed. Ton orders to the amount of $1,663.94; Superior orders, $200.78. Pokegama and $19, Nemadji, were received from D. Schutter, town treasurer—total, $1,883.72—which were cancelled and burned. The following bills were then audited and allowed and orders issued: J. D. Howard, goods furnished for poor, as follows: Mrs. Wolcott and child, $35.60; do., 40c.; Mrs. Bushman, $10.20; Joe Dennis, $22.76; Mrs. Hugnier, $10.00. Total amount, $78.96. W. Ashton,

printing tax receipts, $10.00; W. Ashton, chairman 2 meetings, to date, 3.00; J. D. Howard, tax rent Pokegama, 6.76; William Connor, articles furnished Mrs. Wolcott and child, $20.00; James Edwards, supervisor, 2 meetings, $3.00; A. Parmentier, wood and cutting for Mrs. Wolcott, $20.00; William Kimball, hauling for Mrs. Wolcott, $6.50; R. G. Coburn, stationery for town treasurer, $14.40; do., spiles on dock, $2.50; provisions for Mrs. Wolcott, $17.36; to Dr. W. W. Perry, attendance on poor, $22.50; William Schuster, sawing wood, &c., for town office, $5.00; James Newton, articles 2d St., $9.00; William Cromwell, paper for tax receipts, $1.50; A. A. Hood, salary to April 2, 1862, $40.00; R. G. Coleman, groceries, &c., for old man Lane, poor, $13.87; P. E. Bradshaw, Mrs. Wolcott, $5.83; Mrs. Hugnier, $34.22—total, $40.05; John Peterson, wood for Mrs. Hugnier, $3.00; J. D. Howard, order # 371 changed, $2.00.

Resolved, That the town clerk draw up a contract between the town board, on the one part, and John Peterson and A. Galigher, on the second part, to grub 22 feet and slash 25 feet on each side of the grub-ing on range road at the rate of one dollar per rod, running measure; the grub-ing and slashing to commence on the second mile where the work now ceases.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 1, 1862.

Minutes of the Town Meeting Held at the Place of Last Tuesday, April 1, 1862.

Present: W. Ashton, J. Edwards, Wm. Kimball, inspectors; A. A. Hood, town clerk.

The meeting having been called to order by Wash'ton Ashton, chairman of the board, the following statement was presented, to wit:

Financial Statement of the Town of Superior, Held on the 25th Day of March, A. D. 1862.

The following bills were audited by said board, to wit: There has been expended for the improvement of roads, streets, and avenues in the said town in the past year the sum of $660.32; on Second street, $446.86; Howard's road to Connor's point, $189.30; Avenue 2 and Bay-street bridge, $24.16. There has been paid for the support of the poor in said town the sum of $994.47—for Mrs. Wolcott and child, $420.30; Mrs. Hugnier, $47.22; Mrs. Sera-
171 ault's family, 64.50; Peter Bushman's family, $256.37; Joseph Dennis' family, 175.11; old man Langley, 17.10; old man Lane, 13.87.

April 10, 1861, the following miscellaneous accounts were allowed:

Dennis Dean, inspector town elections			83 00
Stationery for clerk's office			13 80
Owen Sheridan, inspector spring election			3 00
Sam. Smith, " " "			3 00
A. A. Hood, clerk " "			3 00
R. Relf, " " "			3 00
1861.			
Apr. 15.	John Morgan, refreshments at spring election.		5 00
	William H. Connor, extending delinquent tax Pokegema		25 00
1861.			
Apr. 29.	W. Ashton, advertising annual statement		12 00
1861.			
May 9.	A. A. Hood, services as clerk		14 00
May 22.	W. Ashton, chairman 3 meetings t'n b'd		4 50
	James Edwards, supervisor town board		4 50
	Leon Bertrand, supervisor town board		4 50
	A. A. Hood, on account salary		28 00
	John Baxter, for office desk		18 00
June 14.	John Ryan, services overseer highway		7 50
26.	" "		26 00
July 8.	" "		6 25
	A. A. Hood, services as town clerk		20 83
" 19.	Howard & Payton, broom for office		1 00
	W. Ashton, *per diem* board equalization		3 00
	E. B. Strong, " "		3 00
	A. A. Hood, " "		3 00
July 24.	A. A. Hood, on account of salary		21 00
Sept. 6.	Leon Bertrand, supervisor		3 00
19.	A. A. Hood, town clerk		20 66
Oct. 11.	E. B. Strong, services as assessor 100 days *@* $4 per day		400 00
Nov. 3.	D. Schutter, town treasurer, fees dispersing orders		16 20
	A. A. Hood, town clerk		20 83
Dec. 19.	A. A. Hood, town clerk		41 66
	F. W. Anderson, Jr., stationery for t'n tr.		3 00
	J. D. Howard, stationery for t'n tr.		2 73
	Wm. Cranwell, services rendered on tax book.		130 00
1862.			
Feb. 7.	W. Ashton, printing treasurer's rec'ts		20 00
	W. Ashton, chairman 12 meetings t'n b'd		18 00
	James Edwards, supervisor 12 meetings		18 00
Dec. 24.	D. Schutter, office rent		25 00
	Wm. Cranwell, services rendered in t'n office		88 76
	A. A. Hood, town clerk		43 32
March 25.	W. Ashton, printing tax receipts		10 00
	W. Ashton, chm. 2 meetings t'n b'd		3 00
	J. Edwards, supervisor 2 meetings		3 00
	J. D. Howard, Pokegema tax remitted		6 76
	A. A. Hood, town clerk		40 00

Wm. Cranwell, paper for town treasurer	1 50
Wm. Schuster, sawing wood for office.....	5 00
R. G. Coburn, stationery for town treasurer...	16 90
J. D. Howard, balance invoice orders	2 00

172 *Statement of the Fiscal Concerns of the Town of Superior on the 25th Day of March*, 1862.

Amount unexpended March 26, '61.....	$3,402 25
Amount levied April 2, 1861, for roads.....	3,000 00
" " " " " poor.....	1,000 00
Balance poor fund received per Pokegema.....	30 00
For miscellaneous purposes.....	1,200 00
Received from Nemadji.....	209 25
	$8,841 50
Amount expense this year.....	2,829 99
Balance	$6,011 51
Amount road fund unappropriated March 26, '61.....	$2,494 44
" " levied April 2, 1861.....	3,000 00
" received from Nemadji.....	209 25
Balance.....	$5,703 69
Balance road fund.....	$5,703 69
Deduct amount expended to March 25, '62.....	660 32
Balance unappropriated.....	$5,043 37
Amount poor fund unappropriated March 25, 1861....	$283 05
" " levied April 2, 1861.....	1,000 00
	$1,283 05
Deduct amount expended to March 25, 1862.....	994 47
Balance unappropriated to March 25, 1862.....	$288 58
Amount miscellaneous fund unappropriated March 26, '62	$654 76
levied April 2, 61.....	1,200 00
	$1,854 76
Deduct amount expended to March 25, 1862	1,175 20
Balance unappropriated.....	$679 56
Total balance unappropriated March 25, 1862...	$611 51

A. A. HOOD,
Town Clerk.

The foregoing report having been accepted, the following resolutions were offered and passed, viz: On motion, it was resolved that no road tax be levied for the ensuing year. On motion, it was resolved that a tax of $1,500 be levied for the support of the poor and $500 for miscellaneous purposes. On motion, it was resolved that but one assessor, one overseer of highways, and one constable be elected. On motion, it was resolved that the overseer of highways be elected by ballot. On motion of R. W. Perry, Esq., it was resolved that the ordinance passed April, 1860, entitled An act to restrain swine, be in force the year around. After the above proceedings were had the room was cleared and the polls were opened for the election of town officers. Upon counting the votes it was found
173 that the whole number polled was 107, of which, for chairman of board of supervisors, R. W. French received 60 and James Newton, 47; for supervisors, A. C. Brown received 59; Charles Felt, 56; Patrick Fay, 57; A. G. Bertrand, 42; town clerk, A. A. Hood received 69; A. C. Hayward, 38; town treasurer, George F. Holcomb received 71; Charles Hohly, Jr., received 36; for assessor, W. R. Perry received 65, James F. Ritchie received 40, William Mann received 1; justice of the peace (long term), W. R. Perry received 52, Charles Felt received 55, William Mann received 50, L. F. Wheelock received 47; (for short term), Isaac Young received 54, Joseph Mayer received 52; for constable, J. Martell received 52, N. Gonji received 53; for overseer of highways, O. Clawson received 50, A. Gallagher received 53; for sealer of weights and measures, John Peterson received 54, Tim. Sammon received 53.

Thereupon we, the inspectors of the election, do certify that we have determined that the above-named R. W. French is elected chairman of the town board of supervisors; A. C. Brown and Patrick Fay, supervisors; A. A. Hood is elected town clerk; George F. Holcomb, town treasurer; W. R. Perry, assessor; R. W. Perry and Charles Felt, justice of the peace for the long term; Isaac Young and Joseph Meyer, justice of the peace for the short term; N. Gonji, constable; Anthony Gallagher, overseer of highways, and John Peterson, sealer of weights and measures.

Witness our hands this 1st day of April, 1862, A. D.

____ ____,
____ ____,
Inspectors.

Attest: A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, *Apr.* 5, 1862.

First Meeting.

Present: R. W. French, chairman; A. C. Brown, supervisor; Patrick Fay, supervisor.

174 On motion, the *per diem* of officers' salary per day of election held April 1 was ordered paid, to wit: W. Ashton, inspector, $3.00; James Edwards, inspector, $3.00; Wm. Kimball, in-

spector, $3.00; A. A. Hood, clerk, $3.00; Thomas H. Hogan, clerk, $3.00.

On motion, the clerk was ordered to credit Mrs. Hugnier $35.00 for articles purchased for her use of the town as follows: Three shovels, $3.00; four axes, $3.00; two draw-knives, $2.00; one square, .50; one pick, $1.00; old iron, $1.00; cash, $10.50; town orders, $35.00.

On motion,—that the contract between the town board, on the one part, and John Peterson and A. Gallagher, of the second part, made March 25, 1862, for grub-ing and slashing two miles, more or less, on range road, commencing on the second mile, where the work now ceases, be annulled, and that the town clerk is now authorized to notify the parties to this effect.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 21, 1862.

Present: R. W. French, P. Fay, A. C. Brown.

Minutes of the last meeting were read and accepted. The following bills were ordered paid, to wit:

R. G. Coburn, provisions for M. Florin	$3 17
Do. pass book for town officers	1 00
L. Kichiti, flour for the poor	20 00
J. F. Smith, goods for Mrs. Hognier	5 00
L. Rocheford, 6 bu. potatoes Mrs. Wolcott, $5.00 Mrs. Hognier	10 00
D. Schutte, groceries for poor	18 00
A. Gallagher, one day's work on Becker Ave	3 50
Do. ½ day's work on Hawlinghead & 2d	2 00
H. Miller, beef for Miss Florin, poor	4 50
J. Kayes, one day's work on Becker Ave	3 50
J. G. Peterson, sawing wood, Mrs. Hognier	2 00
Wm. Schuster, sawing & carrying wood for office	6 00
John Peterson, two cords of wood, for office	8 00
A. A. Hood, one month's salary ending May 1	20 83
Wm Schuster, clearing snow on 2d St	2 00
	$109 50

Adjourned without date.

A. A. HOOD,
Town Clerk.

175 TOWN CLERK'S OFFICE, *April* 23, 1862.

Present: R. W. French, A. C. Brown, P. Fay.

The minutes of last meeting read and accepted. On motion, it was resolved that $60.00 in orders be paid to W. Gongi and Morrist for work on bridge near Taylor's place, on military road, 412 feet of stringers, $60.00, as per agreement.

Adjourned *sine die.*

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 28, 1862.

Present: R. W. French, A. C. Brown, P. Fay.

Minutes of last meeting read and confirmed. Resolved, That Emerson Chase be paid for work (3½ days), self and team, on military-road bridge, near Taylor's, @ $10 per day, $35.00; J. D. Howard " " " " " " " " 35.00.

Adjourned without date.

TOWN CLERK'S OFFICE, *May* 1, 1862.

Present: All the board.

Minutes of last meeting read and confirmed, after which the following bills were audited and ordered paid, to wit: Mrs. Webster, vegetables for Mrs. Wolcott, $13.35; R. G. Coburn, provisions for M. Florin, $7.33; Mrs. Wolcott, $4.56; Mrs. Hugnier, $5.16; total, $17.05; H. Saxton, for superintending bridge on military road, near Taylor's, 2 days, @ $10 per day, $20.00; F. Prendergast, 2 days' work on do., $10.00; D. Watterman, do., $10; John Hawk, do., one day with French, $12.00; Isaac Young, 3 days on do., $15.00; 2 days French, $20; John Peterson, self and team, $25.00; John Hock & Co., for covering for do., $85.00; extra timber for do., $12.00; total, $209.00; Wm. Wimderle, 1 pr. shoes for Mrs. Wolcott, $5.00.

Adjourned till May 29, 1862.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE *May* 29, 1862.

Meeting held persuant to adjournment.

Present: All the board.

Minutes of last meeting read and approved. On motion, the following bills were audited and ordered paid, to wit: Charles Simmond, tools for town use (see bill), $10.00; D. Schutte, provisions for Mrs. Currier, $3.00; A. Gallagher, repairing bridge on corner 2d St. and Nettleton Ave., $8.00; R. Vorbeck, fish for Mrs. Hugnier, $1.00; Mrs. Currier, .80—$1.80; E. Chase, wood for Mrs.
176 Wolcott, $13.13; A. Gallagher, services as overseer of highways, 11 days to May 13, inc., @ $5 per day, $55.00; C. Holey, medicine for poor, $12.00; J. A. Thompson, medical services, Mrs. Hugnier, $10.00; R. W. French, spikes, $2.25; Mrs. Hugnier, $5.80; A. A. Hood, salary to June 1, inclusive, $21.

Adjourned *sine die*.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *May* 29, 1862.

Special Town Meeting.

The chairman of town board being absent, Mr. A. C. Brown, supervisor, was chosen chairman. On motion, it was resolved that the matter of levying a road tax be committed to the town board, such board to abide by the law.

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *June* 23, 1862.

Present: All the board.

After the reading and approval of the minutes of the last meeting the following bills were audited, allowed, and ordered paid, to wit:

F. Samon, digging grave of N. Fliney (poor)			$5 00
A. Behrend, making coffin, &c			20 00
Wm. Schuster, sawing wood for Mrs. Hugnier			8 00
" " " " Mrs. Comber			4 00
" " digging grave for Mrs. Hugnier's child			5 00
H. Saxton, making coffin for " " "			20 00
J. F. Smith, provisions furnished (poor)			12 99
J. A. Thompson, M. D., attendance on N. Fliney			14 00
W. Ashton, advertising notices of special meet			3 00
Joseph Meyer, interpreting to t'n b'd for Mrs. Hugnier			10 00
J. D. Howard, provisions to N. Fliney	$2 75		
J. " " furnished Mrs. Wolcott	10 00		
" " 6 days N. Pullett & oxen on military-road bridge @ 10 per day	60 00		
" "	$72 75		
Deduct for board and using waggon	7 75		
		65	00
C. Fregian, self and horse M. road bridge		17	40
John Peterson, one cord wood for Mrs. Conner, poor		5	00
C. Hohey, druggist, medicine for poor		8	30
" attendance on Mrs. Hugnier's child		10	00
A. Gallagher, services as overseer highways from May 14 to June 21, inclusive		50	00
R. G. Coburn, provisions for poor		167	21
B. Brooks, work on military-road bridges		30	00
W. Smith, " " " " "		15	00
Lewis Rochiford, " " " " "		45	00
Peter Erickson, " " " " "		28	00
H. W. Shaw, " " " " "		145	52
177 R. W. French, goods furnished military-road bridges		20	42
A. A. Hood, salary town clerk to July 1, inclusive		21	00

TOWN CLERK'S OFFICE, *July* 14, 1862.

Present: All the board.

Reading of minutes of last meeting dispensed with. On motion, the following bills were allowed and ordered paid, to wit:

W. W. Perry, medical attendance on poor	$8 00
E. Chase, work self and team on military-road bridges	66 50
J. Martell, work self and man 1 day on 2d St. — Hollingshead Ave	10 00
J. R. Snyder, timber for military-road bridges	25 00
Wm. Schuster, sawing wood for Mrs. Conier (poor)	4 00
Estate of J. M. Newton, hardware for roads	2 00

Gringi & Morrist, 572 feet covering for bridge on military road @ $1 per foot	572 00
Gringi & Morrist, 2,380 feet stringers @ 12½c. per foot	297 50
" " extra timber	1 80
H. Saxton, 8 days superintending men on M. road bridge	56 00
P. Fay, 15 days " " " "	90 00

The town board received $200 in county orders from H. Shaw, county chairman, as per agreement, to pay on M. R. bridges.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *July* 21, 1862.

Present: All the board.

After the reading of minutes of last meeting the following bills were audited, allowed, and ordered paid, to wit:

H. D. Coburn for 14½ days' work on M. R. bridges @ $4 per day	$58 00
John G. Peterson, 18½ days @ $4 per day	74 00
John G. Peterson, 14 days @ $4	56 00
John G. Peterson, potatoes and sand furnished	6 80
Peter Erickson, 25½ days @ $4 per day	112 00
James Bardon, 15½ days @ $4 per day	62 00
A. Gallagher, work on M. R. bridges, 19 days, @ $4 per day	76 00
P. Buske, 19 days @ $4 per day	76 00
John Kayes, 14½ days @ $4 per day	58 00
Patrick Fay—paid him $1 extra—5 days @ $6 per day	30 00
John Peterson, 5 days at $4 per day	20 00
" " 11 days self and team	99 00
" " 9 " " "	45 00
" " 5½ " " 2 pair oxen	77 00
" " one cord of wood for Mrs. Corner	5 00
John Gwrnea, 8½ days on N. R. bridges	34 00
Chas. Freajeau, 21 days self and horses: 7 days @ 10, $70; 9 days @ $10, $90, and 5 days @ 9, $45	205 35
178 P. Onilson, 32 days @ $4	128 00
Wm. Crofford, 1 bu. potatoes for poor	1 60
J. A. Thomson, M. D., 5 visits to Mrs. Hugnier	10 00
J. Collier, attending pauper's funeral	5 00
Do. hauling on 2d street	24 00
R. W. French, 8 days' superintending M. R. bridges	40 00
" 5 " " poor	25 00
H. W. Shaw, wood for office	10 00
" " " " Mrs. Wolcott	29 00
" " hauling on 2d street	16 00
Emerson Chase, advertising on Chase & Smith, bridge contractors	100 00

TOWN CLERK'S OFFICE, *Sept.* 1, 1862.

Meeting of Town Board Equalizatian.

Present: R. W. French, chm.; W. R. Perry, assessor; A. A. Hood, town clerk.

There being no corrections proposed, on motion, the assessor's roll for 1862 was accepted from W. R. Perry, assessor, and handed over to clerk county board.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Sept.* 10, 1862.

Present: R. W. French, A. C. Brown.

The reading of minutes of last meeting dispensed with. On motion, $150.00 were allowed and paid to S. W. Smith on Chase & Smith 2d-street bridge contract.

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Sept.* 15, 1862.

Present: All the board.

The minutes of last meeting read and accepted. The following bills were then audited, allowed, and ordered to be paid out, to wit:

R. G. Coburn, provisions furnished roads (poor & Co.)	$539	94
R. W. French, sundries, roads, &c	29	40
A. C. Brown (poor)	29	00
D. Schutte, provisions for roads	7	15
C. Holey, druggist for (poor)	63	20
J. D. Howard, for poor and roads	17	50
A. Jachan, for roads	7	50
A. A. Hood, 2 mo. salary to Sept. 1, t'wn cl'k, $42.11, equal	648	00
179 H. W. Shaw, for roads and poor	132	15
Gougi & Tourville, work on M. R.	24	00
John Kayes, work on 2d-St. sidewalks	4	00
W. R. Perry, salary as assessor, &c	150	88
P. Fay, 10 days' attendance as supervisor, 10th Sept. inc.	60	00
R. W. French, 11 days' attendance as chairman, 10th Sept. inc.	44	00
E. C. Brown, 11 days' attendance as supervisor, 10th Sept. inc.	44	00

On motion, it was resolved that the clerk post up notices to persons selling liquor to procure licenses; also to post up notices calling bids for the support of the town poor. There being no further business, the board adjourned till Monday, Sept. 22, 1862, at 3 p. m.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Sept.* 22, 1862.

Present: All the board.

Meeting pursuant to adjournment Sept. 15th.

Minutes of said meeting read and confirmed, after which the following bills were audited, allowed, and ordered paid, to wit:

John Peterson, 7 days' work on M. R.	$30 00
John Peterson, one load wood for Mrs. Corner	5 00
P. Onilson, 7 days' work on M. R.	30 00
P. Erickson, 6 days' work, 5 @ $4 and 1 @ $5	25 00
A. Gallagher, 5 days @ $4	20 00
P. Berk, 5 days @ $4	20 00
P. Fay, one day examining M. R. bridges	6 00
Less one dollar overpaid	5 00
Wm. Schuster, sawing one cord of wood for Mrs. Corner	4 00

On motion, it was resolved that the town clerk be ordered to post up notices to persons engaged in liquor business to procure licenses. There being no further business, the board adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Oct.* 13, 1862.

Present: All the board.

After the minutes of the last meeting were read and accepted, the following bills were allowed and ordered paid, to wit:

Smith & Chase, to close contract building two bridges in uper town	$100 00
Smith & Chase, for railing and extra work on same	350 00
A. A. Hood, salary raised to $400 per annum	75 02
" " to Oct. 1, 1862	20 83
Wm. Connor, articles furnished poor	11 50
F. Prendergast, meat for Wm. Butler (poor)	2 00
180 Wm. Crafford, butter for Mrs. Corner	5 76

On motion, the bonds of the following persons were accepted for the sale of liquor in the town of Superior, viz: Messrs Behrende & Schreiber, license ordered issued for six months from date, Oct. 13, 1862; D. Schutte for the same, Levi B. Coffey same, and F. Prendergast three months from date.

Adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Nov.* 10, 1862.

Present: R. W. French, A. C. Brown.

Minutes of last meeting read and confirmed. On motion, the following bills are ordered paid, to wit: A. C. Brown, for shoes for a poor Swede, $4.00; A. C. Brown, for shoes for Mrs. Corner, $3.00; Saxton & Behrendt, making coffin for Clawson, $20.00; A. A.

Hood, salary to Nov. 1, 1862, $33.00; R. G. Coburn, bill of provisions for poor (see bill), $448.64.

Adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Dec.* 12, 1862.

Present: All the board.

Minutes of last meeting read and accepted. The following accounts presented, audited, and allowed:

R. W. French, bills goods for poor, $27.30; L. Kichti, beef furnished poor, $13.32; L. Kichti, use groundstone on road, $2.68; W. Ashton, printing assessors' blanks, $15.00; C. Hohley, attendance on and medicine furnished poor, $161.10; D. Schutte, provisions furnished poor, $33.40; A. A. Hood, salary to Dec. 1, 1862, $33.00; Adam Dopp, digging grave for Clawson (poor), $5.00.

Adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Jan.* 15, 1863.

Present: R. W. French, A. C. Brown.

Minutes of last meeting read and accepted. The following bills were audited and allowed, to wit:

A. C. Brown, 6 days' attendance as supervisor	$24 00
" " " 2 days' " on fall election	6 00
" " " boots & shoes furnished the poor	25 25
181	
R. W. French, 6 days' attendance as chairman	24 00
" " " " Nov. election	6 00
" " " goods furnished the poor	36 90
John A. Thompson, 24 visits to John Dennis (poor)	48 00
A. A. Hood, 32≠ stovepipe for town office, 12.80	
" " " 2 months' salary, ending Feb. 1, 66.00	81 80
" " " services as clerk Nov. election, 3.00	
A. Gallagher, whitewashing and cleaning	6 00
" " sawing one cord of wood for town office	4 00
" " blacking stove for town office	2 00
E. W. Anderson, Jr., for office rent to Jan. 1, 1863	20 00
Wm. Schuster, sawing wood for Mrs. Corner & Mrs. Hugnier and Clawson	45 00
Old man Bourg, one day's work for Mrs. Wolcott	4 00
J. Martell, fixing office chairs	8 00
Gonji & Morrissett, fixing Mrs. Wolcott's house (poor)	30 52
A. Jachan, 2 bu. potatoes Mrs. Hugnier (poor)	4 00
Louis Rochiford, 3 bu. potatoes Mrs. Wolcott (poor)	6 00
T. H. Hogan, 2 days' clerk Nov. election	6 00
Rich. Relf, 1 day's clerk at Nov. election	3 00
William Mann, one day as inspector	3 00
P. Fay, attendance 5 meetings as supervisor	30 00
" " " on fall election	3 00

On motion, it was resolved that an extension of thirty days be given George F. Holcomb, town treasurer, for collecting taxes.

Adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Feb.* 20, 1863.

Present: All the board.

Minutes of last meeting read and accepted, after which the following bills were audited, allowed, and ordered paid, to wit:

R. G. Coburn's bill, provisions for poor	$592 16
" " " " papers for treasurer (3)	595 16
E. W. Anderson, Jr., rent of house, Mrs. Hugnier (poor)	9 00
Wm. Conner, potatoes, wood, &c., Mrs. Wolcott "	8 00
Wm. Schuster, sawing wood, Mrs. Corner "	7 00
Old man Bourg, working for Mrs. Wolcott "	8 00
J. A. Thompson, medical services, J. Dennis "	40 00
F. Salmon, sawing one cord wood, Mrs. Corner "	5 00
E. C. Clark, extending tax books	100 00
A. Gallagher, sawing wood for office	6 00
J. D. Howard, provisions for poor	21 00
R. W. French, goods for poor	14 06
D. Schutte, boards for office, $16	
" " stationery for office, $4	37 20
" " provisions for poor, $17.20	
A. A. Hood, salary to 1st March	33 00
James Wright, hauling wood, Mr. Butler (poor)	24 00
James Collier, wood for poor	87 00
A. Sorenson, butter for Wm. Butler (poor)	8 00

On motion, it was resolved that the sum of $100 be placed in hands of town treasurer for the support of poor.

182 TOWN CLERK'S OFFICE, *March* 31, 1863.

Annual Meeting.

Present: R. W. French, chairman; A. C. Brown.

The minutes of last meeting read and accepted, after which the following statement from George F. Holcomb was examined and accepted, to wit:

Geo. F. Holcomb, town treasurer, in account with the town of Superior, 1862.

1862, May	17.	To town orders received of D. Schutte..			$8 00
"	"	To county orders received of town board.			200 00
"	"	" " " " " " "			237 00
1863, March	14.	To town orders do. do. do.			100 00
1862, Oct.	13.	Do. do. of Behrendt & Co., six-mo. license.....			25 00
"	"	" " D. Schutte, six-mo. license.			45 00
		" " F. Prendergast, 3-mo. "			12 50
		" " F. B. Coffie, 6-mo. license.			25 00
1863, Jan.	7.	" " received in taxes, y'r 1862	238 65		
Feb.	28.	" " received in taxes, y'r 1862	619 48		
"	"	" " received R. D. Coburn, Co. tr., 1862.....	6,227 21		
				$7,737	84

1862.		Cr.		
July	28.	By Co. orders of R. G. Coburn, Co. tr.....		$200 00
"	" " "	John Peterson.....		37 00
1863.				
March	9.	" " " H. W. Shaw on bridges.....		150 00
"	"	town orders to county treasurer.....		238 65
"	" " "	poor purposes:		
		For Mrs. Hugnier, $25, $25, $25, $25, $17.....		117 00
		Mrs. Corner, $17, $7.....		24 00
Balance on hand herewith delivered: County orders, $50.00; town orders, $6,227.21, $618.98, $75, $6,921.19.				
Total.....				7,737 84

To balance remaining on hand: Co., $50; town, $75—$125.00, retained from the above.

Superior, March 31, 1863.

W. CRANWELL, *Deputy.*

Town orders to the amount of $619 from town treasurer of his own collection were then cancelled and burned, as follows:

Superior.....	$592 50
Nemadji.....	11 00
Pokegama.....	15 50
Total.....	$619 00

A. A. HOOD, *T. C.*

TOWN CLERK'S OFFICE, *April* 4, '63.

Annual Meeting Continued.

Present: R. W. French, A. C. Brown, P. Fay.

After reading and accepting minutes of last meeting town
183 orders received from town treasurer (handed him by county treasurer) to the amount of $6,227.21 were cancelled and burned, as follows:

Superior	$5,747 36
Nemadji	135 00
Pokegema	344 85
Total	6,227 21

Pokegema order # 328, payable to Howard & Payton, issued twice and first stub torn out, $2.00, one of which was signed by Charles Kingsberg, chairman, Jan. 12, and the other by Leon Bertrand, chairman, both same day. See stub book.

Adjourned.

A. A. HOOD, *T. C.*

APRIL 6, 1863.

Annual Meeting Continued.

Present: All the board.

On motion, the following bills were audited, allowed, and ordered paid, to wit: Chas. Hohly, attendance on and medicine furnished (poor), $102.35; John Peterson, wood for (poor), $110.00; Wm. Shuster, sawing wood for poor, $25.00; A. Galligher, sawing wood for office, $4.00; W. Ashton, painting blocks, 4, for assessor, $15.00; J. D. Howards, bill of goods furnished (poor), $3.00; A. C. Brown, bill of goods furnished (poor), $5.50; A. G. Bertrand, bill of goods furnished (poor), $3.00; C. P. Bourge, work for poor, Mrs. Wolcott, $20.00; R. W. French, goods for poor, Mrs. Wolcott, $18.80; missed, $100, $19.80; R. G. Coburn, do. do. do., $17.96; R. W. French, chairman, 4 meetings to date, $16.00; P. Fay, supervisor, 4 meetings to date, $16.00; do. do. (poor, hauling for), $6.25; A. C. Brown, supervisor, 4 meetings to date, $16.00; D Schutte, goods for (poor), $1.60; E. W. Anderson, Jr., rent for Mrs. Hugnier (poor), $25.00; J. A. Thompson, M. D., attendance of J. Dennis, poor, $27.50; H. Miller, meat for poor, $12.00.

Adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 7, 1863.

Minutes of Last Meeting, Held at the Place of Last Tuesday, April 7, 1863.

Present: R. W. French, chairman; A. C. Brown, P. Fay, inspectors; A. A. Hood, clerk.

The meeting having been called to order by R. W. French, chair-

man, the following statement was presented, to wit: At a meeting of the board commencing March 31, 1863, ending April 6, 1863, annual meeting, the following bills were audited by said board, to wit: There has been expended for the improvements of
184 roads, streets, and avenues in said town the sum of $4,176.89. There has been paid for provisions, wood, medical attendance, medicine, &c., for support of poor for said town, $3,786.00. There has been accounts allowed and drawn from miscellaneous funds for clerk's salary, *per diem* of supervisor, assessor, bill wood, rent of office, &c., the sum of $1,154.36. Statement of the official concerns of the town of Superior on the 6th day of April, A. D. 1863: Road fund—balance unappropriated March 25, 1862, $5,043.37; amount expended to March 31, 1863, $4,176.89; balance unappropriated, due — 31st, 1863, $866.48.

Poor fund: Balance March 25, 1862, $288.58; amount levied Apr. 1, 1862, $1,500.00; total, $1,788.58. Amount expended to April 6, '63, $3,785.96; overdraft, $1,997.38.

Miscellaneous fund: Amount unappropriated March 25, 1862, $679.56; amount levied April 1, 1862, $500.00: $1,179.56. Amount expended to April 6, 1863, $1,154.36: $25.20.

Balance of road funds, $866.48.

" " misc., 25.20.

Poor fund overdrawn, $1,997.38.

The foregoing report having been accepted, the following resolutions were offered and passed, viz: On motion, it was resolved that a tax of $4,000, four thousand dollars, be levied for support of town poor for the ensuing year and a tax of $500 for road purposes; also a tax of $1,500 for misc. purposes.

On motion of W. R. Perry, Esq., it was resolved that hogs be not allowed to run at large, the owners to be liable to a fee of $3.00 per every offence. On motion, it was resolved that some system be adopted for support of poor. On motion, it was resolved that the last above motion be indefinitely postponed. On motion, it was resolved that but one assessor be elected and but one overseer of highways, the overseer to be elected by ballot. After the
185 above proceedings were had the room was cleared and the polls were opened for the election of town officers. Upon counting the votes it was found that the whole number polled was one hundred and twenty-eight (128), of which for chief justice of the supreme court Luther L. Dixon received sixty-six (66) votes and M. M. Cothers fifty-nine (59); for chairman of town board of Superior, R. G. Coburn received fifty-nine (59) and James Newton sixty-seven (67); for supervisors, Patrick Fay received sixty-seven (67); Louis Rochiford, sixty-nine (69); Charles Felt, fifty-three (53), and Sixtus Hoffman sixty (60); for town clerk, A. A. Hood received seventy-six (76); William Perry, eight (8); E. H. Bly, two (2), and D. Clark, one (1); for town treasurer, August Jachan received sixty-four (64) and Thompson Ritchie received sixty-two (62); for assessor, Samuel W. Smith received sixty-three (63) and Richard Relf received sixty-two (62); for justice of peace, Oliver Lemorice received sixty-six (66); William Mann, seventy (70); Joseph Mayer, fifty-

six (56); Emerson Chase, fifty-five (55); for constable, R. W. French received fifty-six (56) votes; E. H. Bly, fifty-nine (59) votes; E. W. Anderson, Jr., sixty-seven (67) votes; James S. Ritchie, sixty-seven (67) votes; for overseer highways, John Kayes received sixty-five (65) votes; John Peterson, sixty (60); for sealer of weights and measures, A. C. Brown received fifty-nine (59) and James Collier sixty-five (65).

Whereupon we, the inspectors of the election, do certify that we have determined the above-named Luther L. Dixon is elected chief justice of the supreme court; James Newton, chairman town board of supervisors; Patrick Fay, Louis Rochiford, supervisors; A. A. Hood, town clerk; August Jachan, town treasurer; Sam'l W. Smith, assessor; William Mann, justice of the peace; O. Lemorice, justice of the peace; E. W. Anderson, Jr., constable; James S. Ritchie, do.; John Keys, overseer highways; James Collier, sealer of weights and measures.

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Witness our hands this 7th day of April, A. D. 1863.

—— ——,
—— ——,
Inspectors.

Attest: A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Apr.* 20, '63—10 a. m.

First Meeting.

Present: James Newton, chairman; Patrick Fay, supervisor; Louis Rochifird, do.

The minutes and results of town meeting held April 7, 1863, having been read, the following bills were audited, allowed, and ordered paid, to wit:

R. W. French, inspector of the election, Apr. 7, 1863.....	$3 00
P. Fay, " " " " " " "	3 00
A. C. Brown, " " " " " " "	3 00
A. A. Hood, clerk, " " " " " " "	3 00
J. D. Howard, " " " " " " "	3 00
	$15 00
Gonji & Masset, balance timber on M. road	12 00
J. A. Thompson, M. D., attendance on town poor.....	20 00
A. A. Hood, salary town clerk to May 1, 1863.	33 00
Wm. Conner, articles furnished Mrs. Wolcott (poor).....	9 80
	$74 80

On motion, resolved that the town clerk notify liquor dealers to renew their licenses. On motion, it was resolved that the following amounts be allowed to paupers now on the town as their monthly allowance (until changed), to wit: Mrs. Hugnier and boy, $20.00; Mrs. Conner, $17.00; John Lane & wife, $20.00; Wm. Butler & two

children, $20.00; Mrs. Wolcott and girl, $25.00; M. Dennis & wife, $17.00; Joe Dennis & wife, $17.00; Charles Eckert, $12.00—$148.

On motion, it was resolved that no physician's bill be allowed for visiting poor unless the visit is made per order either of town board of supervisors. On motion, resolved that the board employ Wm. Cramwell to make statement of indebtedness of Douglas county to town of Superior.

Adjourned.

A. A. HOOD,
Town Clerk.

187 TOWN CLERK'S OFFICE, *May* 25, 1863.

Present: All the board.

The minutes of last meeting were read and confirmed, after which the following amounts were ordered to be issued and handed to James Newton for town poor as their allowance for one month, commencing May 20, 1863, viz: Mrs. Hugnier & boy, $20.00; John Lane & wife, $20; Wm. Butler & two children, $20.00; Mrs. Wolcott & child, $25.00; M. Dennis & wife, $17.00; Joe Dennis & wife, $17.00; Chas. Eckert, $12—$131.00.

On motion, it was resolved that the petition that nine freeholders to vacate the road on qr. section line running through the center of section 15, 49, and from last point in N. E. direction to St. Louis bay to a point opposite Oneota, except four rods from the first-named section to the county road, be granted with the express understanding that it is to be opened at any time required. On motion, it was resolved that the town *to* let a contract to build a plank walk, two planks wide, and three if enough planks, from entrance from tower side of stockade around to connect with 2d-street walk on upper side of stockade; also to repair walk on 2d street so as to cross the ravine on bridge just above Frank Rogs' place, wages not to exceed one twenty-five per day. The following bills were presented, audited, and allowed, town orders to issue in payment of the same: To Bella Brooks, hauling wood for Mrs. Wolcott (poor), $3.72; Bella Brooks, hauling wood for Mrs. Conner (poor), $6.76—$10.48. J. A. Thompson, M. D., four visits to Joe Dennis (poor), $8.00; to Joseph Mayer, repairing walks and bridges on First and Second street and furnishing 5 pounds of nails, $16.00; John Kayes, overseer of highways, on account, $10.50. The $17 drawn for Mrs. Conner (poor) April 20 is now ordered to be applied to Mrs. Wolcott's monthly allowance in consequence of her loss at the fire, May 22, 1863.

Adjourned *sine die.*

A. A. HOOD,
Town Clerk.

188 TOWN CLERK'S OFFICE, *June* 27, 1863.

Present: All the board.

Minutes of last meeting read and confirmed, after which the following amounts were ordered issued to James Newton for the town poor

for the month ending July 20, 1863, as follows: Mrs. Hugnier & boy, $20.00; John Lane & wife, $30.00; William Butler & two children, $32.00; Mrs Wolcott & child, $30.00; M. Dennis & wife, $17.00; Joe Dennis & wife, $17.00; Charles Echert, $12—$158.00.

James Collier was allowed wood bill for poor, $16.00. James Collier was allowed wood bill for office, $6.00. A. A. Hood was allowed salary town clerk from May 1, 1863, to July 1, 2 months $66.00.

On motion, Emerson Chase was given contract to lay walk not less than three feet wide on Bay street, in burnt district in upper town, to furnish plank and ties, all for $75.00 in town orders.

Adjourned without day.

A. A. HOOD, *T. C.*

TOWN CLERK'S OFFICE, *June* 30, 1863.

Town board of equalization.

Present: James Newton, chairman; Sam. W. Smith, assessor; A. A. Hood, town clerk.

The town board, having been duly sworn, proceed*ing* to examine the valuation of personal property, total amount of which is $19,856, which, on motion, was accepted as returned by assessor.

Adjourned till 9 a. m. July 1, 1863.

A. A. HOOD, *T. C.*

JULY 1, 1863.

Present: All the board.

Meeting pursuant to adjournment June 30.

On motion, the following changes were made, to wit: The S. W. ¼ of sec. 36, 49, 14, from $2.75 to $3.00, and lots 1, 2, and 3 and N. W. ¼ of S. E. ¼ of sec. 36, 49, 14, from $2.75 to $3.50.

Adjourned to next day.

A. A. HOOD, *T. C.*

JULY 2, 1863.

Present: All.

After the minutes of last meeting were read and accepted the following changes were made, to wit: Lot- 1 & 2 and S. W. ¼ of N. E. ¼, 14, 49, 14, Vealsburg, 113.81 acres, from ten to $12 per acre; lot 2 and S. W. ¼ of S. W. ¼, 13, 49, 14, Royhact, 77.50 acres, from $18 to $14 per acre; also N. E. ¼ of S. E. ¼, 14, 49, 14, Felt, 40 acres, from $7 to $8 per acre; lot 5, block 34, Second street, Superior city, from $137.00 to $150.00; lot 5, block 35, Second street, Superior city, from $138.00 to $150.00; C. P. Daily, lot 101, West 2d street, Superior, from $125.00 to $175.00; L. F. Wheelock, lot 159, W. Second street, Superior, from $250 to $300; Corcoran & Bright, lot 300, W. Second street, Superior, from $33 to $20; James Collier, lot 288, W. Second street, from $233 to $260; Mrs. John M. Newton, lot 291, W. Third street, from $175 to $200; Thomas Koher, lot 322, Third street, from $75 to $100; Caldwell & Weisiger, lot 335, W. Third street, from $15 to $20.

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Adjourned to next day.

A. A. HOOD, *T. C.*

JULY 3, 1863.

Present: All the board.

The minutes of last meeting read and accepted. On motion, the following changes were made, to wit:

Lots 7, 8, and 9, N. W. ¼ of N. E. ¼, 1, 48, 14, from $2 to $3.25 per acre; N. W. ¼, 1, 48, 14, from $2 — $3; N. E. ¼, 2, 48, 14, from $1.75 to $2 per acre; S. E. ¼, 2, 48, 14, from $1.75 to $2.25 per acre; all of section 10, 48, 14, from $1.50 to $1.75 per acre; lots 10, N. ½ N. W. ¼, 11, 48, 14, from $2 to $1.75 per acre; N. E. ¼, 12, 48, 14, from $1.25 to $1.50 per acre; lot 4, in 1, S. E. ¼ of N. W. ¼, 12, lots 1, 2, 3, and 4, 156.87 acres, from $1.75 to $2 per acre; lots 6, 7, and 9, sec. 11, 48, 14, from $1.75 to $2.00 per acre.

Adjourned until Monday, July 6, 1863.

A. A. HOOD, *T. C.*

JULY 6, 1863.

Present: All the board.

After the minutes of last meeting were read and confirmed, on motion, it was resolved that a reduction of the assessor's valuation of 25 per cent., or as near that amount to make even figures, be made on all lots and blocks and fractional blocks and lots lying between the Nemadji river, including all of Superior City, from both sides of West Itasca St., running back to the N. E. side of 10th street, in Superior; the above changes all made by the consent of all the board. There being no further business, the board adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *July* 14, 1863.

Present: All the board.

The minutes of last meeting read and accepted. On motion, it was resolved that the town board appoint as town physician and agree to allow Dr. John A. Thompson $100 cash per annum, in orders at their correct value, payable quarterly.

On motion, the following bonds of liquor dealers were accepted, to wit: Behrendt & Schreiber, retail; Louis Ritchie, retail; Leon B. Coffey, retail; F. Prendergast, retail; D. Schutte, wholesale and retail. After which the following ac'ts were audited, allowed, and ordered paid, to wit: Wm. Shuster, sawing wood for Mrs. Conner, poor, $5.00; Owen Sheridan, spikes for road, $20.55; John Kayes, services as overseer highways for 21 days ending July 13, 1863, @ $5 per day, $105.00—paid him $10, leaves $95.00; E. W. Anderson, for joice for sidewalk, $16.00; P. Fay, medicine for William Butler, poor, $8.00.

Adjourned to July 20, 1863.

A. A. HOOD,
Town Clerk.

190 TOWN CLERK'S OFFICE, *July* 20, 1863.

Present: All the board.

Meeting pursuant to adjournment. After minutes of last meeting were read and confirmed, on motion, it was resolved that Sam. W. Smith be allowed for services as assessor and for his bill paid for printing blanks, &c., the sum of $328.00 in town orders. The following bills were then audited, allowed, and ordered paid, to wit: L. Rochiford, for attendance as supervisor five meetings of board, $20.00; John Lane, work on 2d-street sidewalk, $12.00; Mrs. Hugnier and boy, poor, one month to Aug. 20, $20.00.

J. Lane & wife, poor, one month to Aug. 20,						$30.00.
Wm. Butler & children,	"	"	"	"	"	32.00.
Mrs. Wolcott & child,	"	"	"	"	"	30.00.
M. Dennis & family,	"	"	"	"	"	17.00.
Joe Dennis & wife,	"	"	"	"	"	17.00.
Chas. Echart,	"	"	"	"	"	12.00.

Adjourned *sine die*.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Sept.* 4, 1863.

Present: James Newton, L. Rochiford.

After the minutes of last meeting were read and accepted the following bills were allowed and ordered paid, to wit: E. Chase, for laying plank walk in upper town, as per agreement, $75.00; J. Morriste, for repairing pier, $63.00; L. Rochiford, for repairing bridge and sidewalk on Second street, $68.00. The amounts for the poor for the month commencing Aug. 20 were ordered issued: Mrs. Hugnier and boy, $20.00; John Lane & wife, $30.00; William Butler, $32.00; Mrs. Wolcott and child, $30.00; M. Dennis & wife, $17.00; Joe Dennis & wife, $17.00; C. Erkert, $12.00; Mrs. Conier, $17.00—$175.00.

The bills of Dr. C. Hohly were laid over.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Sept.* 23, 1863.

Present: L. Rochiford, James Newton.

Minutes of last meeting read and accepted. On motion, the following bills were ordered paid, as follows, to wit: Doc. J. A. Thompson, bill as town physician for the quarter ending Oct. 14, 1863, $100.00; R. G. Coburn, bill for poor, roads, &c., $138.00; James S. Ritchie, rent of town clerk's office one year, ending Jan. 1, 1864, $50.00; A. A. Hood, salary as town clerk three months, ending Oct. 1, '63, $100.00; Lars Lenrott, planks on 2d St., $22.40; H. Miller, 2 cords wood for poor, $20.00—$430.40.

Adjourned *sine die*.

A. A. HOOD,
Town Clerk.

191 TOWN CLERK'S OFFICE, *Oct.* 28, 1863.

Present: James Newton, chairman; L. Rochiford.

After the minutes of the last meeting were read and accepted, orders to the amount of $1,178.97 were cancelled and burned, as follows: Nemadji, $6.00; Pokegema, $75.00; Superior, $1,097.97.

Order # 344 for $2, payable to John Garratz, was cancelled March 26, 1861. After the above the board adjourned to 2 p. m. this day.

2 P. M.

Present: James Newton, L. Rochiford.

The proposition of G. W. Gates to build two bridges on S. Ave., Superior city, 30 feet span each and 16 feet wide, one bend in center of each laid on timber or joice supported on banks by logs and carried with two-inch plank and capped, to be done before June 1, 1864, for $30.00 or its equivalent in cash, one-half payable in advance, the rest when work — completed, was accepted and sixty dollars in orders ordered issue for him in advance. After which, on motion, the following bills were audited, allowed, and ordered paid, to wit:

D. Schutte, goods furnished poor, $20.80; A. Jachin, hauling wood for C. Lord, $8.00; L. Rochiford, work on Second street, $14.00; A. A. Hood, five days on board of equalization, $20.00; Wm. Schuster, sawing wood for Mrs. Corner, $3.00; Wm. Schuster, cleaning town office and splitting wood, $10.00; R. G. Coburn, plank, &c., Quebec pier, $307.60; E. W. Anderson, Jr, paid men for work, do. do., $240.00; H. Saxton, superintending men five days, do. do., $30.00; Dr. Hohle, medicine furnished poor, $65.00; J. W. Gates, amount advanced him on arrangement to build two bridges on S. Ave., upper town, $60.00; E. Chase, moving Mrs. Wolcott, &c., $9.00; A. A. Hood, salary T. C. one month ending Nov. 1, '63, $35.00; Chas. Lord, poor, for month commencing Oct. 20, '63, $32.

TOWN CLERK'S OFFICE, *Nov.* 13, 1863.

Present: J. Newton, L. Rochiford.

The minutes of the last meeting were read and confirmed. On motion, it was resolved that the resolution passed on July 20th, 1863, allowed S. W. Smith $328 in town orders for services as assessor be rescinded, and that he be allowed $428 instead of the above sum. The following bills were then allowed, audited, and ordered paid, viz: F. Ritchie, notary public, taking oath of office at election, Nov. 3, 1863, $5.00; Wm. Schuster, sawing three loads of wood for Mrs. Wolcott, poor, $12.00; Wm. Schuster, sawing two loads of wood for town office, $8.

Ad.

A. A. HOOD,
Town Clerk.

192 TOWN CLERK'S OFFICE, *Nov.* 20, 1863.

Present: L. Rochiford, P. Fay.

The board met to issue orders for town poor for the month commencing Nov. 20, '63. Wm. Butler, poor, was stricken from the list.

Mrs. Joe Dennis, poor, was stricken from the list. Mrs. Hugnier and boy received $20.00; J. Lane received $30.00; Mrs. Wolcott received $30.00; M. Dennis received $17.00; Chas. Echert received $12.00; Mrs. Corner received $17.00—$126.00.

Adjourned *sine die*.

TOWN CLERK'S OFFICE, SUPERIOR, *Nov.* 28, 1863.

Present: James Newton, Louis Rochiford.

The reading of the minutes of the last meeting dispensed with, the board having met for the purpose of making appropriation from the poor fund to assist Jeremiah Martell, of this place, in raising his commutation money in case the authorities at La Crosse do not exempt him from the dr't; the amount to exempt him from U. S. services, $300 in greenbacks. On motion of James Newton, $150 in town orders were allowed and ordered to issue, and the amount received from them to be placed in the county treasurer's hands and to be refunded to the town in case the said J. Martell is exempted on account of physical disability. The amount in cash received for the above orders is $52.50.

Adjourned *sine die*.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Nov.* 30, 1863.

Present: J. Newton, chm.; P. Fay.

The minutes of last meeting read and accepted. On motion, it was resolved that an appropriation from the road fund of $125 per mile be made to grub 18 feet wide, starting from center section 10 and running in a southerly direction for a mile and one-half, more or less, on west bank on Nemadji; $400 in orders to be advanced to John Fay, as per contract made with him this day, the work to be completed by the first day of Dec., 1864, and if done previous the whole amount to be paid.

On motion, the following accounts were ordered paid, to wit:

R. W. French, bill of rent, H. Parrish building on Nettleton Ave., occupied by Mrs. Wolcott (poor) to Jan. 1, 1864, $14.45; T. Samon, cutting wood for poor, $12.25; H. Saxton, bal. for superintending men on Quebec pier Oct. 28, 1863, $10.00; A. A. Hood, salary as town clerk one month ending Nov. 30, 1863, $33.00; A. A. Hood, balance of bill for attendance on town board of equalization, $10.00; J. A. Thompson, M. D., drugs for poor, $11.02.

There being no other business, the board adjourned with date.

A. A. HOOD,
Town Clerk.

193 TOWN CLERK'S OFFICE, *Dec.* 7, 1863.

Present: J. Newton, P. Fay.

After the minutes of the last meeting were read and accepted the following bills were audited, allowed, and ordered paid, to wit:

C. Hohly, druggist, medicines for poor, $15.62; Jack Engles, saw-

ing wood for poor, $5.63; John Wallen, wood for poor, $15.63; Bella Brooks, wood for poor, $30.00; James Newton, house rent one year, ending Jan. 24, 1864, for Mrs. Corner & Hugnier (poor), $75.00; do., do., order advanced old Mr. Larose, poor, $26.00; D. Schutte, sundries for poor, $16; D. Schutte, misc. stationery for town office, $5.60; P. Fay, inspector of election, Apr. 7, '63, $3.00; P. Fay, supervisor, 13 meetings town board, $52.00; James Newton, chairman, 13 meetings town board, $52.00; James Newton, shoes for Mrs. Wolcott, poor, $20.00.

Adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, MONDAY, *Dec.* 14, 1863.

Having received a certificate from D. George Morrison, treasurer of Douglas county, Wis., that he had accepted a bond from A. Jachan, town treasurer, for the amount of $35,000.00, being double the amount of taxes levied for State, county, town, and school purposes, I have this day delivered to Eber H. Bly, dept. town treasurer, the town books as extended by me for the year 1863. The town treasurer, August Jacham, is hereby charged the sum of $17,050.79, total aggregate amount of taxes, year 1863; $17,050.79 due to Douglas county, Wisconsin, which sum he is required to account with the treasurer of said county. The aforesaid taxes were estimated and declared for the following purposes:

State purposes,	3	mills	.....	$1,150 79
County "	20	"	.....	9,100 00
Town "	13	"	.....	6,000 00
School "	2	"	.....	800 00
				$17,050 79

The total equalized valuation of all real and personal estate is $——.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Dec.* 21, 1863—2 p. m.

Present: James Newton, ch.; L. Rochiford.

194 The reading of the *last* minutes of the last meeting, Dec. 7th, was dispensed with. On motion, it was resolved that on account of the increase of the value in the town orders the town poor receive as their monthly allowance a smaller sum in orders, as follows, to wit:

Mrs. Wolcott and child,	$20	instead of	$30.
Mrs. Corner,	10	"	17.
John Lane & wife,	20	"	30.
Chas. Echart,	6	"	12.
M. Dennis & wife,	10	"	17.

Mrs. Benj. Dennis was allowed $10, being her first allowance.

The above amount, 876, was then ordered to be issued and distributed for the month ending Jan. 20, 1864. The following bills were then audited, allowed, and ordered paid, to wit: D. Schutte, goods for poor, $3.00; D. Schutte, candles, &c., for town office, $1.80; Carlisle Doble, rent of house on Second street occupied by John Lane, poor, three years, to Dec. 21, 1864, $35.00; Richard Bardon, Dec. 19th, wood for poor, 30 cords, *@* one dollar per cord, order $60.00; A. Gallagher, 3 days' work at Charles ——, poor, *@* $2 per day, $12.00; Louis Ritchie, cast iron for C. Lord, poor, $2.80; F. Marsett, hauling for C. Lord, poor, $6.00.

On motion, it was resolved that one dollar per month *to* be placed by the town in Dr. Thompson's hands to purchase beef to make soup for the town poor. The quarter ending Jan. 14th, 1864, of J. A. Thompson, town physician, amounting to $25.00 cash was allowed, and orders, as the equivalent, amounting to $62.50 were ordered paid to him, and his report as town physician from July 14, 1863, to date was read and accepted.

Adjourned *sine die*.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Dec.* 29, 1863.

Present: James Newton, L. Rochiford.

The reading of the minutes of the last meeting dispensed with. On motion, the following accounts were audited, allowed, and ordered paid, viz: L. Rochiford, attendance as supervisor, 8 meetings, $32.00; L. Rochiford, attendance on election, Nov. 3, 1863, $3.00; L. Rochiford, canvassing election, Nov. 3, '63, $3.00; total, 38.00.

James Newton, chairman, 5 days on town board		$30 00
" "	canvassing election, Nov. 3, 1863	3 00
" "	attendance at " "	3 00
		$36 00

A. A. Hood, salary, town clerk, one month, ending Dec. 31, 1863, $33.00; A. A. Hood, extra for extending taxes, 1863, &c., $1.50.

Atshison, sawing wood for poor, $4.50; J. B. St. John, clearing snow from 2d street, $3.00; J. W. Gates, balance on two bridges, S. Ave., as per agreement per board, $30.00; town orders to the amount of $2,581.84 were received from the county treasurer, D. Geo. Morrison, and cancelled and burned as follows: Superior, $2,390.84; Pokegema, $2,581.84.

Town Meeting.

A special meeting of the qualified electors of the town of Superior will be held at the place of last town meeting (at the office of the register of deeds) on Wednesday, March 2, 1864, at 7 p. m.,
195 for the purpose of levying a tax of $200 for bounties to volunteers and $200 — annual support for the families of volunteers and drafted men while in the service.

Superior, Feb. 25, 1864.

A. A. HOOD,
Town Clerk.

Special town meeting held pursuant to the above call at the office of register of deeds, Superior, Douglas county, Wisconsin, March 2d, 1864, at 7 p. m.

Patrick Fay, chairman *pro tem.*; Louis Rochiford, supervisor.

The meeting was called to order by the chairman *pro tem.*, and after the reading of the notice the following resolutions were voted unanimously, to wit:

1st. Resolved, That it shall be the duty of the supervisors of Superior to provide for the payment of $200 to every man (not exceeding fourteen) who may volunteer from this county, and pay the same to him on his order when he is accepted for service, and to raise such money in the manner provided by law.

2d. Resolved, That the supervisors are hereby instructed to provide and pay to the family of every man who may volunteer or be drafted from this county having a family dependent upon him for support the sum of $200, said amount to be paid only to the families of such as are accepted: Provided, however, that the obtaining of a substitute or paying the commutation required by law shall not deprive such family of this benefit.

The meeting was largely attended.

There being no further business, on motion, the meeting adjourned *sine die*.

A. A. HOOD,
Town Clerk.

196 TOWN CLERK'S OFFICE, *March* 17, 1864.

Present: Patrick Fay, chm. *pro tem.*; Louis Rochiford.

Minutes of last meeting read and confirmed, after which, on motion, it was resolved that a special tax of $2,800 be levied as a bounty to volunteers in — with resolutions passed at citizens' meeting held at register's office March 2, 1864; whereupon the board issued 25 town-bounty orders, amounting to $1,640, payable one year from April 1, 1864, bearing interest at the rate of 7 per cent. per annum; the above special tax levied for the express purpose of liquidating the above liability on the part of the town of Superior. The amount, $1,640, was disposed of at $.75 on the dollar. Total cash received, $1,230, which was placed in the hands of Eber H. Bly, who was selected at citizens' meeting held at court-house March 16, 1864, as the person to see to the procuring of volunteers to fill quota of Douglas county to 13 men, the said Bly having first given satisfactory security to D. Geo. Morrison, P. Fay, L. Rochiford, the committee appointed at said meeting to accept bonds, &c.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *March* 9, 1864—9 a. *a.* m.

Present: P. Fay, L. Rochiford.

Minutes of last meeting read and accepted. On motion, the following accounts were audited, allowed, and ordered paid, to wit: Wm. Butler, for cutting, splitting, and carrying in wood at town office,

$7.50; John Kays, cleaning snow from sidewalks, 2d street, $2.00; L. Rochiford, for wood furnished Mrs. Hugnier, Nov., '63, $4.00; L. Rochiford, work done at M. Dennis' (poor), $2.00; A. A. Hood, T. C. salary from Jan. 15, 1864, to March 1, 1864, $50.00; after which there was deposited with the town clerk $76, to be handed town poor on the 20th inst. P. Fay was allowed for overcharge, order # 138, Dec. 7, '63, $24.10; $115.60. This amount borrowed from county treasurer for town orders to be cancelled.

197 There being no further business, the meeting adjourned *sine die*.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 2, 1864.

Annual Meeting.

Present: Patrick Fay, chm. *pro tem.*; Louis Rochiford.

Minutes of last meeting were read and accepted. Town orders received from D. Geo. Morrison, county treasurer, of this day, amounting to $1,622, as follows, to wit, Superior, $1,518; Pokegema, $61; Nemadji, $43; total, $1,622, were cancelled and burned. The following accounts were then audited, allowed, and ordered paid, to wit: Richard Bardon, clerking one day at November election, 1863, and one day comparing same, $6.00; John Atchinson, for cutting wood for poor, $13.12; A. A. Hood, town clerk's salary ending April 1, 1864, $33.00; D. Schutte, provisions, &c., for poor, $23.75; D. Schutte, candles for office $.75; B. Brooks, wood for Mrs. Corner, poor, $8.75; C. Hohly, medicines for poor, $6.00; Wm. Cranford, wood for poor, $73.12. The board then allowed H. W. Shaw $100 on his contract with the town board, in 1862, to build bridge on military road at Stunby clearing, leaving $50 in town orders to be paid when work is completed; also gave him an order on town treasurer for balance due him of $50 in county orders.

The following statement from A. Jachan, town treasurer, was then examined and accepted:

Report of town treasurer of the town of Superior to the board of supervisors of the town of Superior, Douglas Co., Wisconsin, to wit: Rec'd of the late treasurer, George F. Holcomb, as balance on bridge contract with H. W. Shaw, county orders, $50; town orders, $75. Received town orders for license for selling liquors, D. Schutte, wholesale and retail, six months, commencing April 13, 1863, $45.00; L. Ritchie, license commencing July 1, 1863, $25.00; F. Pendergast, liquor license commencing Dec. 30, 1862, $50.00; Behrendt & Schreiver, 6 months, July 17, 1863, $25.00; L. Croffy, six months' retail license, 6 mos., July 1, 1863, $25.00; Hibbard & Buchannan, six months, commencing Oct. 15, '63, $25.00; total for liquor license, $195.00.

Received of county treasurer for school district #2, cash, $73.69. Collected taxes and paid orders to county treasurer, to wit: Cash, $274.84; county orders, $1,278.64; town orders, $835.49; total,

$2,389.97. Paid to A. A. Hood, town clerk, for poor purposes, by order of James Newton, chairman, $170. Paid to treasurer, H. D. Coburn, of school district = 2, cash, $73.69. To balance on hand, bridge money contract with H. W. Shaw, county orders, $50; town orders, $75; balance of license money-town orders, $25. My fees on $320, at 2½ per cent. int., $8.00; bal., $17.

Respectfully submitted to board of supervisors April 2, 1864.

A. JACHAN,
Town Treasurer.

On motion, board adjourned till April 4, 1864.

A. A. HOOD,
Town Clerk.

198 TOWN CLERK'S OFFICE, *Apr.* 4, '64.

Annual Meeting Continued..

Present: P. Fay, chm. *pro tem.*; L. Rochiford.

After reading minutes of the meeting of April 2, 1864, on motion, the following bills were allowed and orders issued therefor, viz: H. Miller, wood and beef for poor, $5.00; James Collier, plank for 2d street and wood for poor, $5.00; Jacob Engles, six days sawing wood do. do., $15.00; Dr. C. Hohly, medicine for Mrs. Davidson, orders from J. M. Thompson, M. D., T. phy., $69.75; L. Rochiford, 5 meetings town board, ending Apr. 4, 1864, $20.00; P. Fay, do. do. do. do. do. do., $20; P. Fay, canvassing Nov., '62, election, $3.00; E. W. Anderson, Jr., paid for T. H. Bailey's ax, lost on Quebec pier Oct. last, $5.00.

On motion, the board adjourned.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 5, 1864.

The Minutes of Town Meeting Held at the Place of Last Tuesday, April 5th, 1864.

Present: P. Fay, chm. *pro tem.*; L. Rochiford, sup.; Chas. Felt, to fill vacancy of J. Newton, absent, inspectors.

The meeting having been called to order by P. Fay, chairman *pro tem.*, the following statement was presented, to wit:

Financial Statement of the Town of Superior.

At a meeting of the town board commencing April 2, 1864, and ending April 4, 1864 (annual meeting), the following bills were audited by said board, to wit: There has been expended for the improvement of roads, streets, avenues, and Quebec pier in said town the sum of $1,789.70. There *has* been paid for provisions, wood, medical attendance, medicine, &c., for support of poor of said town $2,707.12. There *has* been accounts allowed and drawn from misc. fund for clerk's salary, *per diem* of supervisors, assessor, bill wood, rent of town clerk's office, &c., the sum of $1,399.10.

service in answer to draft called for March 10th, 1864, to April 15th, 1864, called for quota of Douglas county, or if his affidavits are not in time for said call then he is to be credited upon next quota in case of another draft. In accordance with above, order was issued and placed in possession of town clerk. On motion, it was resolved that Mrs. Wolcott and child receive $24 in town orders, instead of $20, as monthly allowance, commencing April 20, 1864; Mrs. Corrier, $5, instead of $10, for present month only; John Lane & wife,
201 $24, instead of $20; M. Dennis & wife, $24, instead of $10; B. Dennis & wife, for present month only, 10. Orders issued and handed to L. Kuchli. There being no further business, the board adjourned *sine die*.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *May* 16, 1864.

Present: All the board.

Minutes of last meeting read and accepted. On motion, the following persons were stricken from the pauper list: Mrs. Corrier, J. Lane & wife, and Mrs. B. Dennis. Orders were then issued for Mrs. Wolcott, $24; M. Dennis & wife, $12.00; total, $36.00 for months ending June 20th, 1864. The following bills were then allowed, to wit: D. Waterman, work on 2d-St. sidewalk, one-half a day, $3.00; James Russel, work on 2d-St. sidewalk, ½ day, $3.00; John Burroughs, work on 2d-St. sidewalks, ½ day, $3.00; A. Atchison, sawing word for poor, $8.58; L. Kuchli, meat for poor, $1.45; R. Bardon, clerk election Apr. 5 & 6 and May 3d, 1864, $9.00; A. A. Hood, do. do. do. do. do. do., $9; L. Kuchli, inspector election, May 3d, '64, $3.00; P. Fay, do do. do. Apr. 5 & 6 & do. do. do., $9.00; L. Rochiford, do. do. do. do., $9.00.

Adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *June* 6, 1864.

Present: L. Kuchli, L. Rochford.

Minutes of last meeting read and confirmed. On motion, the following bills were audited, allowed, and ordered paid: N. Gouji, work on M. road bridge, $5.71; A. Freazean, work, self and horse, on M. road bridge, $8.57; L. Rochford, work on M. road bridge, $7.14; J. S. Ritchie, rent town clerk's office 6 months ending July the 1st, 1864, $25.00; deduct six months from May to Dec. 21, 1864, Lane, poor-house (5), 20.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *June* 18, 1864.

Present: L. Kuchli, L. Rochford.

The minutes of last meeting read and accepted, after which the following bills were audited, allowed, and ordered paid, viz: M.

Dennis & family, poor, one month to July 20, 1864, $10.50 instead of $12; Mrs. Wolcott, poor, instead of $24, $10.50; D. Waterman, one day's work on 2d-St. sidewalk, $5.00; L. Rochford, 1¼ day's work on 2d-St. sidewalk, $6.20; L. Rochford, paid N. Gouji for plank for M. road, $3.15.

Adjourned without day.

A. A. HOOD,
Town Clerk.

202 TOWN CLERK'S OFFICE, *June* 21, '64.

Present: All the board.

After the minutes of last meeting were read and confirmed the following accounts were audited, allowed, and ordered paid, to wit: R. G. Coburn, provisions furnished poor, $48.75; R. W. French, 4 months' rent house to Mrs. Wolcott, poor, ending April 31, 1864, $15.00; Owen Sheriden, to one elbow and putting up pipe in town office, cash, $1; do. do. do., hardware furnished poor, 1.60—$2.60; orders, $6.50; L. Kuchli, 20 # nails Second-street sidewalk, $5.00; A. A. Hood, salary as town clerk 3 months ending July 1, 1864, $62.50.

TOWN CLERK'S OFFICE, *July* 7, 1864.

Present: L. Kuchli, chm.; P. Fay.

Minutes of last meeting were read and accepted, after which, on motion, resolved that we, L. Kuchli, chm., and P. Fay, supervisor, comprising the majority of the town board of supervisors of Superior, Douglas Co., Wis., do hereby order A. A. Hood, our clerk, for us to make out a complaint against Messrs. Behraudr & Schriber for keeping a liquor saloon in said town since Jan. 17th, 1864.

Adjourned *sine die.*

A. A. HOOD,
Town Clerk.

NOTE.—The above has since been withdrawn, as the parties have taken out license for one year.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *July* 18, 1864.

Present: L. Kuchli, chm.; L. Rochford.

After the minutes of last meeting were read and accepted, on motion, the board of Messrs. Behrendt & Schriber for retail liquor license one year from Jan. 17, 1864, was accepted; they paid cash for same, $20. On motion, resolved that the names of Mrs. Wolcott and child be stricken from the list of town paupers, and that M. Dennis and family be allowed for month ending Aug. 20, 1864, $10.50.

Adjourned *sine die.*

A. A. HOOD,
Town Clerk.

SUPERIOR, DOUGLAS CO., WIS., *August 15th*, 1864.

To A. A. Hood, town clerk of Superior:

The undersigned, electors and freeholders of the above-named town, respectfully pray that a special town meeting be called to meet on August 19th, at 7 o'clock p. m., at the place of last annual meeting, to vote to raise by tax or otherwise $3,600.00 to pay bounties to volunteers under there last call of the President of the United States, or if volunteers cannot be obtained to pay the
203 same to men who may be drafted and accepted.

I. W. GATES.
JOSEPH MAYER.
JAMES WENTON.
D. GEORGE MORRISON.
GEO. F. HOLCOMB.

TOWN CLERK'S OFFICE, *Aug.* 19, 1864.

Special Town Meeting.

Present: L. Kuehli, L. Rochford.

Pursuant to the above request and notice having been duly given by the town clerk, a special meeting was held at office of register of deeds at 7 p. m. and the following resolutions presented by I. W. Gates were adopted by the meeting, to wit: First. Resolved, That the board of supervisors of Superior be authorized, and they are hereby instructed, to levy a special tax of $3,600 to pay bounties to volunteers or for the support of the families of drafted men who may enter the service of the United States under the last call of the president. 2d. Resolved, That this tax be levied with the taxes of the present year. 3d. Resolved, That the board of supervisors be instructed to issue bounty orders payable on the first day of Aug., 1865, with interest at 7 per cent. from date, to the full amount of the levy or such part as may be necessary to raise money to pay bounties to volunteers to fill our quota. 4th. Resolved, That we hereby request the supervisors to appoint an agent to procure volunteers and report with them to the proper officers at La Crosse or otherwhere and provide for the payment of his expenses and services at a reasonable rate. 5th. Resolved, That we hereby request the appointment of an agent to receive and dispose of the bonds and furnish the money to the volunteer agent and give him reasonable compensation. 6th. Resolved, That the provisions of the first resolution shall be applicable to any man who obtains in any way a credit for one man for this county.

TOWN CLERK'S OFFICE, *Aug.* 22, 1864.

Present: All the board.

The minutes of last meeting read and accepted, after which, on motion, bonds of D. Geo. Morrison, recruiting agent, was accepted for the sum of $1,200.00. He has now in his possession $1,050 to

procure volunteers with. On motion, the board agrees to allow said agent $5 *per diem* extra of expenses.

Adjourned *sine die*.

A. A. HOOD,
Town Clerk.

204 TOWN CLERK'S OFFICE, *Oct.* 25, 1864.

Present: L. Kuchli, L. Rochford.

The minutes of last meeting read and approved. On motion, it was resolved that each holder of a town bounty order issued or ordered issued Aug. 19th, 1864, at a special town meeting shall receive his order at date of receipt given by I. W. Gates, agent for selling same. On motion, resolved that Mrs. Hugnier be allowed —— in order for attendance on Mrs. Currier, poor, eleven nights 6 days, milk furnished same, $28.64; L. Kuchli, meat furnished same, $3.76; Mr. La Belle, sawing wood for same, $8.00.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Nov.* 28, 1864.

Present: All the board.

After minutes of last meeting were read and accepted the board took up matter of liquor license and resolved that each and every saloon keeper or dealer in liquors shall pay at rate of $50 per annum to Jan. 1, 1865, unless liquor selling at a wholesale also after Jan. 1st, 1865, shall take license for one year; after which town orders received from D. G. Morrison, Co. treasurer, amounting to $3,296.88 were cancelled and burned as follows: Superior, $3,249.38; Pokegema, $24; Nemadji, $23.50—$3,296.88.

After which the following bills were audited, allowed, and ordered paid, to wit: L. Kuchli, 11 days' attendance on town board as chairman, $1.50 per day, $16.50; L. Kuchli, paid H. D. Coburn, work on Third street, Superior City, $12.00; L. Kuchli, one cord of wood, Mrs. Corrier, poor, $5.00; James Newton, three months' rent house for poor from Jan. 23, 1864, to April 23, 1864, $12.00; Richard Bardon, balance on wood, Dec. 19, '63, $12.00; A. A. Hood, salary as town clerk from July 1st, '64, to Dec. 1, '64, $92.55; John Peterson, self and team 2d-St. sidewalk, $6.00; T. Conway, sawing wood for Mrs. Currier, $4.00; P. Bunk, banking Mrs. Wolcott's house, 1863, $13.00; R. G. Coburn, nails for sidewalk, $28.18; R. W. French, to 8 months' rent house for Mrs. Wolcott, poor, to Dec. 31, '64, $16.00; R. W. French, 12# spikes for 2d-St. sidewalk, $3.00; Louis Lenroot, work on 2d-street sidewalk, $2.50; John Wallen, services making out personal tax, correcting and making additions to real property for 1864, $140.00.

Meeting 28th & 29th Nov., 1864, cont'd. L Rochiford, 11 days' attendance on town board, $33.00; P. Fay, 7 days' attendance on town board, $21.00.

NOTE.—Louis Kuchli protested against P. Fay and L. Rochford &

John Wallen drawing more than $1.50 per day in town orders for their services as officers.

A. A. HOOD,
Town Clerk.

205 TOWN CLERK'S OFFICE, *Nov.* 30, '64.

Present: L. Kuchli, ch.; P. Fay, supervisor,

The minutes of last meeting read and approved. On motion, resolved that in consequence of the small levy in April, 1864, at town meeting of only $500 for misc. purposes, the town board is made to pay the town clerk a reasonable compensation for extending taxes for 1864.

NOTE.—Levies for 1864, to wit: Co., $9,100; State, $2,190.75; school, $1,050; town, $3,204; $6,400 to be computed on real estate and personal property amounting to $479,414.37.

TOWN CLERK'S OFFICE, *Jan.* 27, 1865.

Present: L. Kuchli, ch.; P. Fay.

On motion, it was resolved that John T. Morgan, town treasurer, shall have an extension of 30 days from Jan. 30, 1865, as collector of taxes for the year 1864.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *March* 28, 1865.

Annual Meeting.

Present: All the board.

After the minutes of the last meeting were read and accepted the following bills were audited, allowed, and ordered paid, to wit: R. W. French, 3 months' rent H. Paresh's house, corner 3d St. and Nettleton Ave., occupied by Mrs. Wolcott, poor, to April 1, 1865, $6; O. Sheridan, moving cooking stove, &c., for Mrs. Corner, poor, $9.50; R. G. Coburn, one cord dry wood for Mrs. Veale, poor, $5.00;
Wm. Butler, sawing wood for town office, $3.00;
" " " " " Mrs. Veale, $5.00;
" " " " " Mrs. Corner, $12.00;
J. G. Peterson, " " " " " $3.50;
W. Schuster, 2 cords, Mrs. Corrier and Mrs. Veale, $8.00; old man La Belle, sawing ½ cord of wood for Mrs. Corrier, $2.00; L. Kuchli, hauling ½ cord of wood for Mrs. Corrier, $2.50; A. Parmentire, L. Kuchli, meat for A. Kultman, poor, $7.00; L. Kuchli, paid man 25c. helping load wood, poor, 50c.; L. Rochford, shoveling snow on 2d street, $2.00.

On motion, that the collection of liquor license be laid over to new board.

APRIL 3, 1865.

Annual Meeting Continued.

Present: All the board.

On motion, the following bills ordered paid, to wit:

A. Jachan, one cord of wood, Mrs. Vale, " " " " " " Currier, } $8.00;

206 C. Hohly, medical treatment, do., do., 33 visits, $49.50; C. Hohley, medicine, do. do., $12.40; R. Relf, printing assessor's blanks, 1864, $10.09; S. Oberg, services as assessor, 18½ days at $1.00 per day, ending Apr. 3, 1865, $27.00; L. Kuchli, chm. 3 meetings town board ending Apr. 3, 1865, $4.50; P. Fay, supervisor, do. do. do. do. do. do., $9.00; L. Rochford, do. do. do. do. do. do. do. do., $9.00.

NOTE.—L. Kuchli protests against P. Fay and L. Rochford receiving more than $1.50 in town orders for services as supervisor. On motion, resolved that the town-bounty order issued Apr. 18, 1864, for $266.67 to order James Flynt be cancelled and burned, after which A. A. Hood's bill for services as town clerk, 4 months; $66.72, ending April 1, 1865, was allowed; L. Kuchli, attending to town poor three days, $4.50.

On motion, the board adjourn-.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *April* 4, 1865.

Minutes of Town Meeting Held at Place of Last Tuesday, April 4, 1865.

Present: L. Kuchli, chm.; P. Fay, sup.; L. Rochford, sup., inspectors.

The meeting having been called to order by L. Kuchli, chm. the following statement was presented, to wit: Financial statement of the town of Superior. At a meeting of the town board commencing March 28, 1865, and ending Apr. 3, 1865 (annual meeting), the following bills were audited by said board, to wit: There has been expended for the improvement of roads and avenues — streets in said town the sum of $103.45. There *has* been paid for provisions, wood, medical services, medicines, &c., for the support of the poor of said town $470.08. There *has* been accounts allowed and drawn from miscellaneous fund for clerk's salary, *per diem* of supervisors, assessors, bill wood, rent of office, &c., the sum of $556.27.

Statements of the Official Concerns of the Town of Superior on the 3d Day of April, 1865.

Road fund.

Amount overdrawn Apr. 4, 1864	$432 22
" levied for ensuing year	1,000 00
	$567 78
Amount expended to April 3d, 1865, inc	103 45
	$464 33

Poor fund.

Amount overdrawn April 4, 1864	$704 50
" levied April 5, 1864	1,704 00
	$999 50
" expended to April 3, 1865, inc	372 51
Balance	$626 99

There *has* been expended from license money for poor 207 $97.57, making total for poor $470.08.

Misc. fund.

Balance unappropriated Apr. 4, 1864	$126 10
Amount levied for ensuing year	500 00
Total	$626 10
Amount expended to April 3, 1865, inc	556 27
Balance	$69 83

Total expenditures for past year, $1,129.80. There is a balance of $104 order license money on hand. The amount of town orders outstanding this date, April 3d, 1865, is $2,375.47.

The foregoing statement having been accepted, the following resolutions were offered and passed, viz:

On motion, resolved that a tax of $2,000 be levied for roads and bridge purposes for the ensuing year and a tax of $2,000 for misc. purposes; also a tax of $300 for the support of the town poor for the ensuing year. On motion, resolved that the act to restrain swine be in force the year round, as heretofore. In motion, resolved that no stallions be allowed to run at large, and that a penalty of $10 be made for every such offence.

Town Clerk's Office, *April* 10, 1865.

First Meeting.

Present: James S. Richie, chairman; P. Fay, L. Marresett.

The meeting having been called to order by the chairman, the following resolutions were passed, to wit:

Resolved, That Peter Odell's proposition to build new bridge on military road at Taylor's place for $350 be accepted, he to give suitable bonds; the said bridge to be completed by first of May, 1865. Resolved, That $60 be appropriated for the completion of L avenue, Superior City; that I. W. Gates be appointed overseer of the work and to execute a proper undertaking. Resolved, That Marresett Ave., Middleton, be a public highway, and $150 be appropriated for opening said highway and building a bridge over the creek, and that Morrisett be employed to oversee the work. Resolved, That Third street between Nettleton and Becher Ave. be

ditched under direction of J. S. Ritchie. Resolved, That $125 be appropriated upon Second Ave., in Superior City, under direction of James S. Ritchie. Resolved, That $100 be appropriated upon the river road, under direction of P. Fay, he to give suitable bonds for its completion. Resolved, That the bridge over the sidewalk of Second street between Haulingshead Ave. and military be repaired with one-inch plank; that J. S. Ritchie be appointed to oversee it. Resolved, That the county board be requested to receive ⅓ proportion of town orders for redemption and sale of tax certificates. Resolved, That the following bills for election April 4th, 1865, be allowed, to wit: L. Kuehli, inspector, $3.00; P. Fay, inspector, $3.00; L. Rochford, inspector, $3.00; A. A. Hood, clerk, $3.00; Richard Bardon, clerk, $3.00.

There being no further business, the board adjourned without day.

A. A. HOOD,
Town Clerk.

208 TOWN CLERK'S OFFICE, *May 1st*, 1865.

Present: All the board.

The meeting having been called to order, Mr. P. Fay moved that the resolution passed April 10, 1865, to expend $125.00 in town orders on L Ave., in Superior City, be re-cinded. Motion not passed. On motion, it was resolved that $7.00 in town orders be paid to P. Odette and children for shovelling snow from 2d street, Superior. On motion, resolved that the alley between Becker and Nettleton Ave. and between 2 & 3d streets be kept perfectly clear of all obstructions and town clerk to notify the parties living in said square. On motion, resolved that town clerk notify saloon-keepers to pay town treasurer at rate of $35 retail and $25 wholesale per annum liquor license from Apr. 1, 1865, in cash.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *May 8th*, 1865.

Present: J. S. Ritchie, L. Morrisette.

Minutes of last meeting read and accepted, after which it was resolved that orders be issued to amount of $350 to Louis Morrisette, pay for building bridge at Taylor's place, on military road, by Podette, as per resolution April 10, 1865. On motion, resolved that $75 in town orders be issued for building bridge on Morrisette Ave., Middleton, as per resolution April 10, 1865.

J. S. Ritchie, $8.00; John Collier, $8.00.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *June* 10, '65.

Present: All the board.

After the minutes of last meeting were read and accepted, all the proposals for digging wells, there being three, were opened, read, and

rejected. The following resolutions were then passed, to wit: Resolved, That the resolution made May 1, 1865, be re-cinded and that saloon-keepers pay as licenses to town treasurer, commencing April 1, 1865, for wholesale license $40 in town orders and for re-
209 tail license $70 in town orders per annum. Resolved, That $20 in town orders be appropriated for a ditch on Fifth street between Becker and Nettleton Aves. and that Henry Elliot superintend the work: said ditch to be one foot deep and one foot wide at bottom and five feet wide at top, the dirt to be thrown into the centre.

On motion, resolved that $20 in town orders be appropriated for a ditch on H Ave., Superior City, and that H. Coburn superintend the work.

On motion, resolved that $50 in town orders be allowed Anthony Gallagher and John Collins for improving Third street between Nettleton and Becker avenues.

The following bills were then ordered paid, to wit: Ashton & Relf, for printing town ordinance, &c., $23.20; Ashton & Relf, for printing assessor's blanks, $10.00; James Collier, for hauling plank on Second street, $7.00; do. do., wood for poor, $11.00; Bela Brooks, one cord of wood, Mrs. Curier, poor, $5.00; do. do., hauling sand on 2d street, $6.00; D. Shutte, one cord of wood, Mrs. Corier, in May, 1865, $5.50; do. do., candles for clerk's office, .60; A. Parmentier, work at Mrs. Young's funeral, ¾ day, $4.50; Mary La Belle, sawing, splitting, and carrying in one cord of wood for Mrs. Corrier, $6.00.

On motion, the board adjourned to next Monday morning, June 12, '65.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *June* 12, 1865.

Present: J. S. Ritchie, L. Morrisette.

Meeting pursuant to adjournment, June 12, 1865. Minutes of last meeting read and accepted; after which, in accordance with the official notice of ten days duly given to the clerks of the school districts # 1 & 2, Messrs. H. D. Coburn and E. W. Anderson, Jr., representing said districts, being present, the town board of supervisors do order and determine that the town of Superior, which includes the county of Douglas, be, and hereby is, divided into three school districts, to wit, # 1, 2, & 3, with boundaries as follows.

On motion, resolved that the sum of $50 in town orders be appropriated to and for the new school district # 3 for the necessary expenses in fitting up a school-house and organizing the district, ten $10, of which is to pay for drawing up papers, serving notices, &c.

Adjourned.

A. A. HOOD,
Town Clerk.

210 TOWN CLERK'S OFFICE, *June* 20, 1865.

Present: J. S. Ritchie, P. Fay.

Minutes of last meeting read and accepted; after which, on motion, the following resolutions were offered and passed, to wit: Resolved, That, in accordance with chapter 14th of 1865 laws, we will receive town bounty orders in payment of town bounty taxes from the county treasurer. Resolved, That the clerk notify the following persons to pay their personal tax for the years 1862 & 1863, viz: W. Ashton, R. G. Coburn, J. Collier, E. Chase, Thomas Clarke, S. A. Dolby, Peter Erickson, C. Felt, C. Frazean, N. Gouji, G. F. Holcomb & Co., I. W. Gates, Behrendit & Schriber, Wm. Cranwell, J. Hinton, D. Harrington, W. Kimball, L. Kuchli, C. A. Legal, John T. Morgan, H. Miller, J. M. Newton, estate W. R. Perry, J. Wright, E. W. Wright, O. Lennorison, F. Morrisette, L. Oberg, James Peterson, Richard Relf, F. Rorrillard, H. W. Shaw, str. Seneca, W. Wondrell, Rev. H. Williamson, John Wollen; that two notices be posted up by said clerk notifying delinquents that after the first of July suits will be commenced. Resolved, That the resolution passed at meeting of June 10th, 1865, to pay A. Gallagher & John Collins $50 for ditching on 3d street between Becker & Nettleton Ave. be, and is hereby, — by restraining A. Gallagher's portion until he settles with town board as overseer of highways.

Adjourned *sine die*.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *July* 24, 1864.

Present: J. S. Ritchie, L. Morrisette.

Resolved, That the $25 due A. Gallagher for work on 3d street between Becker & Nettleton Aves. be paid him. There being no further business, the board adjourned without day.

A. A. HOOD,
Town Clerk.

211 TOWN CLERK'S OFFICE, *July* 30, 1865.

Present: S. Ritchie, L. Morrisette.

On motion J. S. Ritchie, that *that* O. Sheridan act as clerk, A. A. Hood being sick. Carried.

Minutes of last meeting read and approved. The following bills were then ordered paid, to wit:

W. O. Sheridan, to making assessment dog list to agricultural and mineral statistics, $465.80; H. D. Coburn, work on bridge on Second street, near Rug, $14.00; La Belle, sawing wood at Mrs. Corrier's, $6.00; H. D. Coburn, bill of June 21st, work on bridge in Superior City, $11.00; Wm. Crofford, to work on sidewalk, hauling lumber, &c., $58.76; B. Brooks, hauling lumber, plank for walk, $4.00; J. D. Howard, bills of June 15th & 23d, lumber, $107.76; F. Ritchie, lumber for walks, $10.00; P. Bark, work on sidewalks, 13 days, $52.00; T. Samon, do. do. do. do., $52.00; J. Collins, do. do. do., 11 days, $44.00; J. Sives, do. do. do., 1 day, $40.00; H. Miller, lumber

for sidewalks, $2.00; O. Sheridan, services on board of equalization, $40.00; A. A. Hood, do. do. do. do., $40.00; J. S. Ritchie, do. do. do., $28.00; T. Ritchie, rent of office for town clerk up to July 1st, 1865, $25.00.

Resolved, That the resolution of June 12th, 1865, for the formation of school district = 1, and of which notice was duly served upon the clerk of said district, be hereby changed as follows, to wit: All that portion of school district = 1 west of the center line of Second street, of Holls-head Ave., and west of the center line of Nettleton Ave. and 21 St.; thence on the center of said Nettleton Ave. to north and south center line of section 35.

Adjourned till Saturday, Aug. 5th, 1865, at 6 p. m.

Resolved to pay Isaac Young, to replace tools destroyed by fire, twenty-five dollars.

OWEN SHERIDAN,
Town Clerk pro Tem.

TOWN CLERK'S OFFICE, *Aug. 5th*, 1865.

Present: J. S. Ritchie, L. Morrisette, P. Fay.

The minutes of last meeting read and approved, J. S. Ritchie, L. Morrisette voting in their favor, P. Fay against. On motion, that James Newton act as clerk *pro tem.* Carried.

The following bills were then ordered paid: To three months' rent of building on 3d street of R. W. French for Mrs. Wolcott, $3.00, or orders, $6.00; to Chas. Echart, sawing one cord of wood for Mrs. Wolcott, $5.00; O. Sheridan, bill of April, work on ferry, $4.00; J. Collins, do. do. do., highway, $10; O. Sheridan, do. do. do. do., $4.00; J. Salmon, do. do. do. do., $4.00; M. English, do. do. do. do., $4.00; Wm. Crofford, do. do., hauling timber for 3d & 4th street, $5.00; A. Gallagher, bill of April, hauling timber highway, 6th St., $10.00; L. Kuehli, hauling spile, 2d- St. sidewalk, $1.50.

212 The following resolution was unanimously carried:

We, the undersigned supervisors of the said town of Superior, having met and deliberated on the subject embraced in this order, and in accordance with section 1, chapter 19, Revised Statutes, do hereby order that the territory in Superior, Middleton, and Superior City, and extending to and bounded by the St. Louis river, be, and is hereby, divided into two road districts, to wit: Road district = 1 shall include all that portion of Superior extending from the town line of Middleton to the Nemadji river, and the inhabitants on the same and all the inhabitants liable to work on highways therein shall be, and are hereby, assigned to work on said district = 1; road district = 2 shall include all that portion of Superior (town of) extending from the line of Middleton, Superior, west to the St. Louis river; that no one but an actual resident of the aforesaid district shall be appointed or elected overseer of the highways in a-y one of the said districts.

JAMES NEWTON,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Aug.* 19, 1865.

Present: J. S. Ritchie, L. Morrisette.

On motion, resolved that N. Soujie be appointed to notify every qualified voter of school district # 3 to attend the meeting for organization and election, appointed in accordance with law by this board for Aug. 26, '65, at 7 o'clock in the afternoon, at the house of L. Morrisette, in Middleton.

J. W. BRADSHAW,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Sept.* 2, 1865.

Present: J. S. Ritchie, L. Morrisette.

213 On motion, it was resolved that the clerk of school district # 1 and 2 be notified that the town board would meet on the 7th day of Sept., 1865, to take into consideration the formation of school district # 3 and certain changes in the boundaries of said district.

JAMES NEWTON,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Sept.* 7, 1865.

Present: J. S. Ritchie, L. Morrisette.

In accordance with the official notice duly given to the clerks of school districts # 1 & # 2 and Messrs. J. W. Gates and E. W. Anderson, Jr., clerks of said districts # 1 & 2 being present, the following order changing the boundaries and organizing school district # 3 was passed unanimously, to wit: It was hereby ordered and determined that the town of Superior, which includes the county of Douglas, be, and is hereby, divided into three school districts, to wit, # 1, 2, & 3, with, boundaries as follows: District # 1 comprises all that portion of the town of Superior lying east of a line commencing at the intersection of Hollingshead avenue with the Bay of Superior, thence, on the center of said avenue, fourth westerly to the center of West Second street; thence fourth easterly to the center of Nettleton avenue; thence fourth westerly on said avenue on the north and south center line of section 25, t'w'p 49, R. 14; thence fourth along said line to the fourth quarter post of section 36, t'w'p 49, R. 14; thence east on the t'w'p line out to the corner t'w'p 49, R. 12 and 13; thence north to Lake Superior.

District # 2 comprises all that portion of the town of Superior lying west of a line commencing at the Bay of Superior at the boundary between Middleton and Superior City, thence out to the east and west center line of section 24; thence west to the west quarter post of sec. 24; thence fourth to the S. W. corner of section 24;

214 thence west along the south line of section 23 to the southwest corner of section 23, t'w'p 49, R. 14; thence south along the section line to the t'w'p line between town. 48 and 49; thence east to the northeast corner of township 48, R. 14; thence south on a line between t'w'p 48, R. 13 & 14, to the south boundary line of said town of Superior.

District # 3 comprises all the remaining of said township of Superior not included in # 1 and 2. All orders and divisions made by the former superintendents of schools and by the town board of supervisors of Superior, Nemadji, and Pokegema are hereby repealed. This order will take effect on the 7th day of September, A. D. 1865.

Given under our hands this 7th day of September, A. D. 1865.

JAMES S. RITCHIE, *Chairman.*
LOUIS MORRISETT.

On motion, John D. Howard, a taxable inhabitant of school district # 3, was directed to notify every qualified elector of said district to attend a meeting *they* which is hereby appointed to be held at the office of register of deeds of Douglas county on the 16th day of Sept., A. D. 1865, at 7½ o'clock in the forenoon, by reading the notice in hearing of each such voter or in case of absence from his place of residence, by leaving thereat a written notice of the time and place of such meeting at least five days' notice before the appointed time for such meeting.

JAMES S. NEWTON,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Sept.* 7, 1865.

Present: J. S. Ritchie, L. Morrisett.

Minutes of last meeting read and approved. On motion,
215 the following bills were audited and ordered paid, to wit:
To James Corrier for 1 cord of wood for Mrs. Corrier, poor, $6.00; D. G. Morrison, paid men for hunting Mrs. Wolcott's child, poor, $4.00; T. Burk, 2 days' work repairing ferry-boat, $8.00; Peter Odett, 4 days' work on military road; do. culverts, $20.00; J. S. Ritchie, 3 days' work, services as supervisor organizing school district No. 3, $6.00; L. Morrisett, do. do., $6.00.

Resolved, That ten dollars be appropriated for stationary for town clerk's office.

Adjourned without day.

JAS. NEWTON,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Sept.* 14, 1865.

Present: J. S. Ritchie, L. Morrisett.

Minutes of last meeting read and approved. On motion, the following bills were audited and ordered to be paid: R. W. French, rent of house to Mrs. Wolcott up to Oct. 1, '65, $6.00; R W. French, bill of nails Jan. 9th, '63, to date, $22.40; R. Braduecofren, 20 days' work on M. road and board, $100.00; P. Berk, 15 days in 2d St. and Nettleton Ave., $60.00; J. Collins, 8 days do. do. do., $32.00; F. Garratz, 1 day do. do. do. do., $4.00; Wm. Shulte, ½ day do. do. do. do., $2.00; N. Petern, 1½ days, Newton, 2d, and Nettleton Ave., $6.00; Wm. Butler, 1 day do. do. do., $4.00; F. Morrisett, teaming do. do. do., $5.00; Waton, for wheelbarrows, $2.00; D. G. Morrison, balance due on money furnished on volunteers, $30.00; J. S. Ritchie, bal. due one trip La Crosse on volunteers, $19.00.

Resolved, That $50 be appropriated for repair of road leading to J. M. Wright's place, provided said Wright execute proper bonds for performance of the work.

J. W. BRADSHAW,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Sept.* 27, 1865.

Present: J. S. Ritchie, chm.; L. Morrisett.

The minutes of last meeting were read and accepted. Notice of the action of districts # 1, 2, & 3 having been served upon us according to law, it is hereby ordered and determined that the Union High School district shall comprise the town of Superior, said town of Superior consisting of the limits of the county of Douglas, and shall thereafter constitute a Union district for high-school purposes, to be known as the Union High School district of the town of Superior.

Given under our hands this 27th day of September, A. D. 1865.

On motion, meeting adjourned *sine die*.

A. A. HOOD,
Town Clerk.

216 TOWN CLERK'S OFFICE, SUPERIOR, *Oct. 5th*, 1865.

Present: J. S. Ritchie, chm.; L. Morrisett.

The minutes of last meeting having been read and accepted, on motion, the following bills were audited, allowed, and ordered paid to wit:

Wm. Butler,	16½	days'	work	on	Second	street, in Middleton,	$66 00
P. Odette,	11	"	"	"	"	"	44 00
Nels. Peterson,	3	"	"	"	"	"	12 00
John Collins,	8	"	"	"	"	"	32 00
P. Berk,	8	"	"	"	"	"	32 00
P. Odett, son,	3½	"	"	"	"	"	14 00
T. Samon,	1	"	"	"	"	"	4 00
T. Garretz,	1	"	"	"	"	"	4 00
L. Morisette,	18	"	"	"	"	"	72 00
C. Frazdean,		"	"	"	"	"	12 00

H. Elliott, appropriation for ditch of 5th street between Becker and Nettleton Ave., $20.00; old man La Belle, sawing and splitting 2½ cords of wood for Mrs. Currier, poor, $7.50; J. Edwards, 2¾ c'ds wood do. do., $14.00; Wm. Crofford, self and team, $10.00; J. Newton, sheriff, removing dead dogs, $1.50.

There being no further business presented, the board adjourned without date.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Oct. 9th*, 1865.

Present: J. S. Ritchie, chm.; L. Morrisett, sup.

The minutes of last meeting were read and accepted, after which the board receipted to D. Geo. Morrison, county treasurer, the town

orders amounting to $3,131.76, three thousand one hundred and thirty-one dollars and seventy-six cents, as follows, to wit: Superior, $2,924.32; Pokegema, $123.19; Nemadji, $84.25; all of which they then compared, cancelled, and burned. On motion, the board adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, SUPERIOR, WIS., *Oct.* 21, 1865.

Present: J. S. Ritchie, L. Morrisett.

After the minutes of last meeting were read and accepted, on motion, it was resolved that James S. Ritchie, attorney-at-
217 law, be appointed to appear and defend the town of Superior in suit brought against the town by J. C. Burbank & Co. and all other suits, with power to engage other coun*cil*. On motion, the following bills were audited, allowed, and ordered paid, to wit:

R. G. Coburn, bill provisions, &c., for town paupers from March 7, '65, to Sept. 27, 1865, inclusive, $77.00; R. G. Coburn, bill nails, spikes, plank, &c., for streets and avenues, July 12th, '65, to Sept. 6th, '65, inc., $48.40; J. W. Johnson's bill, per J. S. Ritchie, one town order book, $20.00; Wm. Crofford for grubbing winter road in sec. 2, 48, 14, $15.00.

On motion, resolved that the petition of Owen Sheridan and others to open out the alley running from Hawlingshead Ave. to Nettleton Ave., between First (1) and Second (2) streets, be accepted and clerk to notify residents of said alley to keep said alley open; the $50 in town orders appropriated June 12th, 1865, to the new district school No. 3 was then issued to J. D. Howard, treasurer of said school. On motion, the board adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Oct.* 30, 1865.

Present: J. S. Ritchie, L. Morrisett.

The minutes of last meeting read and approved. On motion, it was resolved that the business of making distribution of district school property be postponed to Thursday, Nov. 29, '65, *to* 10 a. m. The following bills were audited, allowed, and ordered paid, to wit:

James Syer, for teaming and work on sidewalks on 2d and 3d streets, $41.00; James Syer, for hauling wood for Mrs. Wolcott, poor, $1.00; A. La Belle, balance due for sawing wood Oct. 5th for Mrs. Currier, $7.50; A. La Belle, ½ day's work on Second and Third streets, Superior, $2.00; J. Collins, 7½ days' work on Second and Third streets, Superior, sidewalks, $3.00; P. Burk, 1 day'- work on 2d and Nettleton Ave. sidewalks, $4.00; J. Edwards, balance due Oct. 5th on wood for Mrs. Currier, $2.50; Chas. Frezeau, teaming on Third street, $1.00; do. do. do. do. on 6th St., $10.00; do. do. do. do. in Middleton, $18.00; John Peterson, 5 days' work on sidewalks to Union school, $20.00; do. do. wood Hawlingshead Ave. to 6th St., $12.00; do. do. to Union school sidewalks, $10.00; do. do.

Mrs. Woolcott, poor, $5.00—$47.00; Nels. Peterson, one day's work on sidewalks, $4.00; Wm. Crofford, teaming and work on 2d street, $15.00.

There being no further business, the board adjourned without day.

A. A. HOOD,
Town Clerk.

218 TOWN CLERK'S OFFICE, *Nov.* 1, 1865.

Present: J. S. Ritchie, L. Morrisett.

After the minutes of the last meeting were read and approved, on motion, it was resolved that a town order for $100 be drawn to James Ritchie, attorney for town board of supervisors, to defray the necessary expenses in defending the town of Superior against suit brought by J. C. Burbank & Co. Oct. 31, 1865.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *Nov. 16th*, 1865.

Present: J. S. Ritchie, L. Morrisett.

After the minutes of last meeting were read and accepted, on motion, the following bills were audited, allowed, and ordered paid, to wit: James Edwards, 60 lb. spikes for sidewalk, $12.00; A. Behrendt, glazing for Mrs. Currier, poor, $3.00; allowance for Mrs. Currier, mos. ending Dec. 5th, 1865, $8.00; D. Geo. Morrison, groceries for Mrs. Wolcott, poor, $8.00; allowance Mrs. Wolcott, month ending Dec. 15, 1865, $8.00; A. Dapp, plastering H. Panin's house for Mrs. Wolcott, exchange for six months' rent, $18.00; R. Myley, laying sidewalk, 2d St., Middleton, $12.00; J. Collins, 2½ days' work on 2d St., $10.00; Wm. Butler, 6 days' work on 2d St., $24.00; P. Odette, Jr., 2½ do. do. do. do., $10.00; Pellissiner, ½ do. do. do., $2.00; J. P. Bourg, 3½ days, do. do. do., $14; Nels. Peterson, 1 day's work, do. do. do., $4.00; L. Morrisett, 8 days, self and team 1 day, $42.00; J. S. Ritchie, inspector election Nov. 7, '65, $3.00; P. Fay, do. do. do. do., $3.00; L. Morrisett, do. do. do. do., $3.00; A. A. Hood, clerk, do. do. do., $3.00; J. Newton, assessor do. do., $3.00.

TOWN CLERK'S OFFICE, *Nov.* 30, 1865.

Present: Ritchie, Morrisett.

The minutes of last meeting read and accepted. On motion, resolved that in accordance with section 113, chapter 19, R. S., that a tax of $300 be levied for repairing bridges on 2d St and Nettleton avenue. The resolution signed by the board. Adjourned *sine die.*

A. A. HOOD,
Town Clerk.

219 TOWN CLERK'S OFFICE, SUPERIOR, *Dec.* 11, 1865.

Present: J. S. Ritchie, L. Morrisett.

The minutes of last meeting, Nov. 30, 1865, having been read and confirmed, on motion it was resolved that the resolution passed June 10th, 1865, be re-cinded, and that all persons selling liquors, either by wholesale or retail, be required to pay as license to town treasurer, commencing April 1, 1865, the sum of $35 in town orders, and that the district attorney for Douglas county be authorized to prosecute all persons selling liquors without license. The following bills were then passed:

A. La Belle, sawing and splitting 2 cords of wood for Mrs. Wolcott, $8.00; James Newton, work on bridge corner Thompson Ave. & 2d St., $5.00; J. Perry, 6½ days' work on 2d St. and Morrisett Ave., $32.50; James Russell, 4½ do. do. do., $20.50; J. Bergstrom, a Swede, 5½ do. do. do., $27.50; P. Peterson, do. do. do. do. do., $27.50; J. P. Bourk, 1 day's work do. do. do., $5.00; J. Collins, 1½ day's work on Nettleton Ave. sidewalk, $7.50; Wm. Schuster, do. do. do. do., $15.00; Wm. Butler, 3 do. do. and 5 days after *t* wheelbarrow, $16.00; Tim. Sannon, 6 do. do. do., $30.00; P. Burk, 10 do. do., $50.00; J. Syer, 1½ do. do. do., $6.00; J. Burk, 11 days' work on 2d street and #3 school, $55.00; Wm. Crofford, 1 cord wood Mrs. Currier, $6.00; H. W. Shaw, do. do. do. do., $6.50; Wm. Shuster, banking Mrs. Currier's house, $4.00; do. do. do. do. Mrs. Wolcott, $3.00; W. Crofford, digging ditch on 2d & Newton Ave., $8.00; D. Schutte, 1 cord wood Mrs. Wolcott, $6.00; do. Schutte, 1 cord wood and 32 ℔ spikes for sidewalk, $11.90; F. Ritchie, plank for sidewalk N. Ave., $2.00; S. Freagean, teaming for sidewalk to date, $18.00; C. Freagean, 2 days' work and team on Connor's point, $20; N. Puliott, repairing culvert in Middleton, $2.50; J. Collins, repairing bridge 2d St. — Nettleton Ave., $1.00; J. Collins, 3 days' work at Roy's, $15.00; L. Lendroot, grading S. Ave., Superior City, $111.00; C. Eckert, work on highway, Superior C., $8.00; P. Fay, work on Nemadji River road, $100.00; W. Ashton and R. Relf, for sq. timber and plank for hall, $100; Mrs. Currier, one month's allowance to Jan. 15, 1866, $8.00; Mrs. Wolcott & child, do. do. do., $12.00; A. G. Bertrand, 3 days' work on grading Ave., $12.00; L. Morrisett, 3 days' work self and team " " $27; N. Pulliott, 2½ do. do., $10.00; Wm. Conner, 2 days' work on sidewalk, bridge, & nails, $10.00; Wm. Conner, 2 days' work ditching, $8.00; Wm. Conner, 2½ days' grading Ave. & 263*lb* hay, $14.00; J. Hinton, 2 days' work and timber, $9.00; E. Chase, 3 days' work on sidewalk and plank, $13.00; E. Chase, 3 days' work on Ave. and team, $15.00; E. Chase, 2 days' work, plow & repairs Ave., $3.50; J. D. Howard, bill lumber for —, $123.00; S. W. Wheelock, repairing bridges on 2d St., Superior, $3.00; Dr. Hohly, attendance on Mrs. Currier, poor, $7.80; do. do. do. do., Mrs. Wolcott, $14.10; F. Laurange, one day's work on Connor's point, $5.00; Thomas Kocher, 2 days' work do. do., $10; A. A. Hood, on account salary town clerk, commencing April 1, 1865, $130.00.

Adjourned.

A. A. HOOD,
Town Clerk.

220 TOWN CLERK'S OFFICE, *Dec.* 25, 1865.

Delivered to town treasurer & R. Relf this day tax books counting levies for year 1865 to be collected as follows: For town purposes, $4,600.00; school, $3,400.00 (Union school, $1,500.00; district # 1, $880; district # 2, $300; district # 3, $720); special assessment, Superior City, 112.60. The total equalized valuation of all real and personal property is $—.

TOWN CLERK'S OFFICE, *Jan.* 13, '66.

Present: J. S. Ritchie, L. Morrisett, P. Fay.

The minutes of the last meeting having been read and approved, on motion the board receipted to D. G. Morrison, county treasurer, for town orders amounting to $1,037.88, as follows, to wit: Superior, $1,006 88. Nemadji, $11; Pokegema, $10; all of which they forthwith cancelled and burned; after which, on motion, the following bills were presented, audited, and ordered to be paid, viz:

R. G. Coburn, groceries furnished Mrs. Currier, poor, $5.00; do. do., nails, &c., roads, 2d St. & Nettleton Ave., $47.00; A. La Belle, cutting, splitting, and carrying in 3 cords of wood Mrs. Currier, poor, $15.00; A. La Belle, cutting — splitting 2 cords of wood for Mrs. Wolcott, poor, $8.00; B. Brooks, one cord of wood Mrs. Wolcott, poor, $5.00; allowance month ending Feb. 15, 1866, do. do., $12.00; do. do. do. do., Mrs. Currier, $8.00; A. Jachan, hauling plank for 2d-street sidewalk, $2.00; P. Fay, inspector election, Nov. 4, 1865, 2 days, $6.00; L. Rochifird, do. do. do., $6.00; R. Bardon, do. do. do. do., $6.00; A. A. Hood, clerk, do. do. do., $6; R. Relf, do. do. do. do. do., $6.00.

On motion, adjourned to 2 p. m. this day.

Meeting of 13th Jan. at 2 P. M.

Present: James Ritchie, L. Morrisett.

On motion, the town board received from Richard Relf, town treasurer, orders amounting to $1,409.93, portion of taxes collected for year 1865, as follows: Superior, $1,387.93; Pokegema, $9.00; Nemadji, $13.00; which they cancelled and burned, making a total of $2,447.81 cancelled this day. On motion, resolved that L. Morriset be allowed $40 for cutting winter road in Middleton; also for overseeing street work in Superior City and Middleton, 29 days, @ $1.50 per day, $43.50.

On motion, resolved that J. S. Ritchie be allowed the sum of $30.00 for superintending work on streets and sidewalks nine months ending Jan. 1, 1866, also $15 for services attending to town poor 9 months ending Jan. 1st, 1866, equal $45.00.

There being no further business, the board adjourned without day.

A. A. HOOD,
Town Clerk.

NOTE.—Upon a careful examination and a calculation of the amount of town orders outstanding as taken from the records of orders it was found that the number town of Superior was $3,281.95;

Nemadji, $67.50; Pokegema, $117.14—$3,466.59. This in-
221 cludes Superior town orders #313, issued Jan. 13, 1866, making the total amount outstanding Jan. 13, '66, as above.

A. A. H., *T. C.*

TOWN CLERK'S OFFICE, *Jan.* 23, 1866.

Present: J. S. Ritchie, Pat. Fay.

The reading of minutes of last meeting *were* dispensed with. On motion, it was resolved that Richard Relf, town treasurer, have an extension of thirty days from Jan. 30, 1866, as collector of taxes for the year 1865.

Adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE; *Jan.* 30, 1866.

Present: James S. Ritchie, Louis Morrisett.

After the minutes of the last meeting were read and approved, on motion, the following accounts were audited, allowed, and ordered paid, to wit:

J. S. Ritchie, chairman 25 meetings town board, this meeting included, $37.50; L. Morrisett, sup. do. do. do. do. do., $37.50; Bella Brooks, cleaning snow from sidewalk 2d St., $2.00; R. W. French, spikes, &c., furnished 2d St., $19.00; do. do., topping Mrs. Currier's boiler, $3.00; A. La Belle, cutting, splitting, and carrying one cord of wood — Mrs. Currier and shoveling snow, $6.00; allowance for month ending March 15th, 1866, for Mrs. Currier, $8.00; James Wright, 2 cords of wood Jan. 11th & 27th for Mrs. Currier, $8.00; J. Wright, one cord of wood for Mrs. Wolcott, $4.00; allowance ending March 15, 1866, Mrs. Wolcott, $12.00; James Bungo, sick, allowed him for medicine, $4.00.

There being no further business, the board adjourned without day.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *March* 19, 1866—9 a. m.

Present: P. Fay, chm. *pro tem.*; L. Morrisett.

The chairman, J. S. Ritchie, being absent, P. Fay was made chairman *pro tem.*, after which, on motion, it was resolved that Mrs. Wolcott and child, paupers, should receive $18.00 in town orders as their allowance for the month ending Apr. 15, 1866, and Mrs. Currier $12 in town orders for the same time as pauper. The following bills were then audited and ordered paid as follows, to wit: James Collier, dry wood for Mrs. Currier, one cord in Dec., 1865, $6.00; James Collier, dry wood for Mrs. Wolcott, one cord in Dec., 1865, $6.00; J. Wright, 2 cords wood March 19, 1866, Mrs.
222 Wolcott, $8.00; Patrick Fay, 9 meetings as supervisor, this meeting inclusive, $27.00; A. A. Hood for extending and footing tax books for the year 1865 as received by town treasurer, $200.00.

There being no further business, the board adjourned till Wednesday, March 28, 1866.

A. A. HOOD,
Town Clerk.

TOWN CLERK'S OFFICE, *March* 28, 1866.

Annual Meeting.

Present: J. S. Ritchie, P. Fay, L. Morrisett.

Pursuant to adjournment of meeting of March 19th, 1866, the board opened their annual meeting March 28, 1866, after which, on motion, the following accounts were audited, allowed, and ordered paid, to wit:

W. B. Butler, 1 day shoveling snow on 2d street, $5.00; John Collins, ½ do. do. do. do., $2 50; Thomas Garratz, 1 day do. do., $5; A. La Belle, sawing, splitting, and carrying in 3 cords of wood to date, Mrs. Wolcott, poor, —: A. La Belle, same, 3 cords of wood, Mrs. Currier, $14.50; do. do, shoveling snow for Mrs. Currier, $–.50; Ashton & Relf, printing proceedings, &c., $38.00 instead of $58, as per bill. The board then receipted to Thomas Lord, dep. for Rich'd Relf, town treasurer, for $496.64, Superior town orders, collected taxes 1865, which they cancelled and burned. The board then adjourned to 9 a. m., March 29th, 1866.

MARCH 29TH, 1866.

Annual Meeting Continued.

Present: All the board.

Minutes of last meeting read and approved. On motion, resolved that the town board will pay no bills for work or materials unless said work or materials are ordered by the board or any member thereof. Resolved, That the town treasurer be notified that the town of Superior will pay no compensation to the town treasurer for working out returns of delinquent taxes to the county treasurer.

Resolved, That the sum of $100 in town orders be appropriated for the opening and ditching Carlton avenue between 2d and 4th Sts. to Patrick Fay, provided said Fay give an agreement to complete said work within — months. Resolved, That the sum of $150 in town orders be appropriated for grading Hawllingshead Ave. from 2d St. to the Bay of Superior to D. Schutte, provided that said Schutte execute a proper agreement for the completion of said work within three months.

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Resolved, That Stinson Ave. be kept open from 2d to 6th St. Resolved, That the sum of fifty dollars in town orders be appropriated for a winter road on township 48, R. 14, to Nemadji river, to L. Morrisette, provided said Morrisett execute a proper agreement that said road be completed within six months. Resolved, That the sum of $75 in town orders be appropriated for the grading sidewalk on 2d St., between the agricultural room and Nettleton Ave., to J. S. Ritchie, provided said Ritchie execute a proper agreement

that said work be completed within — months. The following bills were then ordered paid, to wit: J. G. Peterson, one load of wood for Mrs. Currier, March 30, 1865; order, L. Kuchli, $3.50; John G. Peterson, rent of house and lot on 2d St., 7½ months, $15.00; allowed 3 months, $6.00; Ashton & Relf, bill printing, &c., audited March 28, allowed in full, $53.00; R. G. Coburn, 5 cords of wood for Mrs. Currier, $22.50; do. do., 3 cords do. do. Mrs. Wolcott, $13.50; P. Falvy, work on sidewalk 2d St., $2.

Adjourned to Monday, April 2, 1866.

APRIL 2, 1866.

Annual Meeting.

Present: J. S. Ritchie, L. Morrisett.

Minutes of last meeting read and accepted. The following bills were then ordered paid, to wit: A. Gallagher, 2½ days' work shoveling snow on 2d St., $12.00; P. Beck, 3 days' do. do. do. do., $15.00; John Burk, 3 days' do. do. do., $15.00; T. Garratz, 2 days' do. do. do., $10.00; Mrs. Hinton, timber Ford bridge, Superior City, $3.00; T. Ritchie, rent of T. clerk's office 9 months to date, $37.50; L. Morrisette, 5 days' attendance on town board supervisors, ending Apr. 2, 1866, $7.50; J. S. Ritchie, 4 days' attendance as chairman of town board, ending Apr. 2, 1866, $6.00.

After which board resolved that the report of R. Relf, town treasurer, rendered March 28th, 1866, by Thomas Clark, deputy town treasurer, be accepted. The bill of A. Gallagher for services as overseer of highways laid over to new board. On motion, the board adjourned.

A. A. HOOD,
Town Clerk.

SUPERIOR, WIS., TOWN CLERK'S OFFICE, *April* 3, 1866.

Minutes of Town Meeting Held at the Place of Last Tuesday, April 3, A. D. 1866.

224 Present: J. S. Ritchie, chm.; P. Fay, sup.; L. Morrisett, sup.

The meeting having been called to order by J. S. Ritchie, chairman, the following state- was presented, to wit:

Financial statement of town of Superior at a meeting of the town board of supervisors commencing March 28th, 1866; ending April 2, 1866, inclusive (annual meeting).

The following bills were audited by said board, to wit: There has been expended for the improvement of roads, streets, and avenues in said town the sum of $3,880.82; there has been paid for provisions, wood, medical attendance, medicine, &c., for the support of the poor of said town, $561.00; there has been accounts allowed and drawn from misc. fund for clerk's salary, *per diem* of supervisors, assessors' bill, wood, rent of office, &c., the sum of $1,482.14. Total expenditures, $5,923.96.

Statement of the Official Concerns of the Town of Superior on the 2d Day of April, A. D. 1866, Inclusive.

Miscellaneous fund.

Balance unappropriated Apr. 3, 1865	69 83
Amount levied April 4, 1865	2,000 00
	$2,069 83
Amount expended April 2d, 1866, inc	1,482 14
Balance	$587 69

Poor fund.

Balance unappropriated April 3, 1865, inc	$626 99
Amount levied Apr. 4, 1865	300 00
	$926 99
Amount expended to Apr. 2d, 1866, inc	561 00
	$365 99

License fund.

Balance account April 3, 1865, now on hand, $104.00; amount handed to town board March 28, 1866, by Thomas Clark, dep. town treasurer, which they forthwith cancelled and burned, $176.

Road fund.

Balance unappropriated April 3, 1866, inc	$464 33
Amount levied April 4, 1865	2,000 00
" " Nov. 30, 1865	300 00
	$2,764 33
Amount expended to April 2d, 1866, inc	3,880 82
Overdraft	$1,116 49

Total expenditures year ending April 2, 1866, inclusive, $5,923.96.

The amount of town orders outstanding this date, April 2d, 1866, including Superior town orders number 359 issued this day, is $4,153.59.

The foregoing statement having been accepted, the following resolutions were offered and adopted, viz: Resolved, That a tax of $500 be levied for support of poor of said town for the ensuing year. On motion, resolved that a tax of $1,000 be levied for miscellaneous purposes for the ensuing year. On motion, resolved that a tax of $2,500 be levied for road purposes for the ensuing year and the same covering overdraft of $1,116.49 of past year. On motion, resolved that a tax of $3,000 be levied for improving military road. On motion, resolved that the board be instructed to not —.

On motion, resolved that the act to restrain swine be in force the year around as heretofore.

225 TOWN CLERK'S OFFICE, *Apr.* 9, 1866.

First Meeting.

Present: Joseph Mayer, chm.; P. Fay, A. Sodeiland.

On motion, resolved that every bill presented to this board be sworn to before paid; after which the following bills were audited and ordered paid. Resolved, That D. Schutte be notified to remove the heaps of dirt thrown by him on 2d St. and Hawlingshead avenue, to be done within ten days. The following bills were allowed: P. Fay, inspector of election Apr. 3, 1866, $3.00; A. Bardon, do. do. do., $3.00; L. Morrisett, do. do. do. do., $3.00; A. A. Hood, clerk, do. do. do., $3.00; A. C. Brown, do. do. do. do., $3.00; James Bardon, 1 day shovelling snow, $5.00; A. Gallagher's bill, 35 days as overseer of highways, laid over from old board, $50.00. Resolved, That A. A. Hood receive his salary for town clerk at the rate of $125.00 cash.

TOWN CLERK'S OFFICE, *April 17th*, 1866.

Present: Joseph Meyer, chm.; A. Soderland.

On motion, resolved that, in consequence of P. Odett not qualifying as overseer of highways in district # 2, Wm. Conner be appointed in his place, and clerk to notify him.

TOWN CLERK'S OFFICE, *Apr.* 19, 1866.

Present: J. Meyer, chm.; P. Fay.

On motion, resolved that the clerk give notice that the town board receive sealed proposals for ditching 3d street between St. John's Ave. and Nettleton Ave. until April 22, 1866.

TOWN CLERK'S OFFICE, *Apr.* 26, 1866.

Present: J. Meyer, A. Soderland.

As per notice of town clerk, proposals were received and
226 opened for ditching between St. John's avenue and Nettleton avenue on 3d street, two ditches only to Hawlingshead, at $2.50 cash per rod.

TOWN CLERK'S OFFICE, *July* 2, 1866.

Present: J. Meyer, chm.; P. Fay, A. Sodeiland.

Minutes of last meeting read and approved. On motion, it was resolved that James S. Ritche act as clerk *pro tem.* during sickness of the clerk, A. A. Hood, and his inability to act. The following bills were audited, allowed, and ordered paid, to wit: James Syers, $67.25 cash, in orders $134.50; Richard Bardon, $41.25 cash, in orders $82.50; James Bardon, $25 cash, $59 in orders; R. W. French, 3 months' rent, house for Wolcott, poor, $12.00; do. do., nails for 2d-street sidewalk, $37.90; Louis Kuehli, lumber, spikes, and timber in Superior City, cash, $43.90—$87.80; P. Burk, contract on 3d street, $135.00; do. do., contract for ditch on Hawlingshed avenue, $25.00; A. La Belle, bill of May 3d, sawing wood for

Mrs. Currie, poor, $42.00; A. La Belle, bill of May 25, do. do., Mrs. Wolcott, $12.00; do. do., 2½ days' work, Mrs. Currier, $9.00; Mrs. Dolley, stationery, $1.40; P. Burk, 1 day's work in Middleton for last board, $4.00; A. Dopp, 1 day's work cleaning ditch, $5.00; J. Martell, repairing bridge, $1.00; E. Chase, hauling lumber and timber, $19.75; H. M. Payton, bill, lumber 2d-St. sidewalk, $500.

Resolved, That sealed proposals be received up to July 13th, 1866, for extending 6th St. from St. John's avenue, Superior, through 5th St., Superior City, to L avenue, to be 18 feet in width in center; said street to be grubbed and cleared off. Resolved, That sealed proposals be received for extending Fourth street, Superior, through 3d street, Superior City, to L avenue up to July 13th, 1866, to be 18 feet in center of the said street; to be grub-ed and cleared off. The board reserved the right to receive and reject any or all proposals. The board wish to open that one of said streets that can be done cheapest. The petition of John Smith for 1,200 feet plank for sidewalk in Superior City was granted. On motion, it was hereby ordered that from and after the 1st day of July, A. D. 1866, the rate fixed for license to sell liquor and keep saloons be fixed at the rate of $75 per annum in town orders; said resolution to be published for three weeks in Superior Gazette and the clerk to give town treasurer a written notice. There being no further business, the board adjourned.

J. S. RITCHIE,
Clerk pro Tem.

227 TOWN CLERK'S OFFICE, *July* 30, 1866.

Present: J. Meyer, chm.; P. Fay.

The minutes of last meeting read and approved. The following bills were then audited, allowed, and ordered paid, to wit:

H. M. Payton, bill of lumber, $73.93; in orders, $147.86; Tim. Salmon, 7 days' work on military road, $35.00; McNeil, 6 do. do. do., $30.00; T. Garretz, 2 days' do. do. do., $10.00; A. Gallagher, 1 do. do., $5.00; R. Bardon, 8 do. do. do. do., $40.00; Issac Young, 2 do. do. do. on sidewalk, $10.00; N. Gouji, salary as assessor for year 1866, $100.00.

Resolved, That a sufficient amount be appropriated out of the poor fund to support the poor supported by the town, and that the clerk issue the orders when called for by the chairman. Resolved, That whereas the county of Douglas is legally indebted to said township of Superior for taxes collected and proceeds of tax sales now in hands of said county: Therefore, Resolved, That there be, and is hereby, appropriated out of the moneys aforesaid due from said county for the purpose of repairing the bridge over Pokegema brook, on the military road, in this town, the sum of $200, and that the sum be expended under the direction of John D. Howard so soon as the county board shall place said amount at the disposal of said Howard, to be paid when the said repairs shall have been completed. There being no further business, the board adjourned.

JAMES S. RITCHIE,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Sept.* 10, 1866.

Present: Jos. Meyer, chm.; A. Sodeirland.

The minutes of last meeting read and approved. The following bills were audited, allowed, and ordered paid, to wit: John Collins, 8 days' work, 4 d'ys' cattle and self on Pokegema bridge and mil. road, $40.00; Thomas Garratz, 4 days on Pokegema bridge, 7 days on culvert, $55.00; Tim. Salmon, do. do. do., 7 days, $32.75; Tim. Salmon, do., digging Bryon's grave, $4.00; Tim. Salmon, entered above D. Waterson, 6 days' work on military road, $30; do. do., repairing culvert in Superior City, $2.50; Wm. R. Butler, 1 day — Pokegema bridge, $5.00; L. M. Larson, 6 days on military culvert, $30.00; N. Gouji, 2 days do. do. do. and Pokegema mill,
228 $10.00; W. Schuster, load of poles for sidewalk, $3.00; J. Cutener, @ ½ day's work repairing bridge, $2.50; H. M. Peyton, 3,700 ft. lumber, $74.00; J. Syles, 2½ days' work and hauling plank for sidewalk, $16.00; S. Hoffman, grading M avenue, Superior City, $50.00; O. L. Wilson, ½ day's work of oxen, $6.00; Stevenson, do. do. do., $6.00.

Resolved, That the town clerk order a town order book with not less than 500 orders in. Resolved, That the proposals of G. P. Larson for grubbing 6th St., Superior, from St. John's avenue through 5th St., Superior City, to L avenue be accepted, provided that the work be completed before the first day of December, A. D. 1866. There being no further business, the board adjourned.

JAMES S. RITCHIE,
Clerk pro Tem.

OFFICE OF TOWN CLERK, *Sept.* 25, 1866.

To D. Shutte, town treasurer, Superior.

SIR: You are hereby notified that I have apportioned the school moneys from the State appropriation now in your hands to the different districts of the town as follows: To school district # 1, 86 scholars, at fifty cents each, $43.00; to district # 2, scholars 31, @ $.50 each, $15.50; to school district # 3, scholars 74, @ $.50 each, $37.00; total scholars, 191; State, $95.40; D. Schuttes, 10 cents, $95.50, making the total amount of $95.50.

JAMES S. RITCHIE,
Clerk pro Tem.

The following notice was received: 4th Oct., 1866. To A. A. Hood, town clerk of Superior: You are hereby notified that D. G. Morrison was elected treasurer of school district # 3 of Superior at the annual school meeting September 24, 1866, and that his post-office address is Superior, Douglas county, Wisconsin. Given under my hand this 4th day of Oct., 1866. (Signed) G. R. Stall, clerk of district # 3, Superior.

229 TOWN CLERK'S OFFICE, *Oct.* 22, 1866.

Present: J. Meyre, chm.; A. Sutherland.

The minutes of last meeting read and approved. The following bills were audited, allowed, and ordered passed: To St. Paul

Pioneer, p'r J. S. Ritchie, one town order book, $6.50; A. Dopp, 11 days' ditching on Becker avenue, $55.00; Jno. Collins, hauling timber mil. road, work on sidewalk and plowing 3d St., $11.00; Thomas Garratz, 5½ days near cemetary on mil. road, $27.50; Joseph Guy, 2 days do. do., $10; Joseph Meyers, moving Mrs. Currier, poor, $2.00; John Collins, 6 days' work on cemetary, misc., $30.00; Wm. Schuster, banking Currier's house and sawing cord —, $8.00.

There being no further business, the board adjourned.

J. S. RITCHIE,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Nov.* 7, 1866.

Present: Jos. Meyer, chm.; A. Sutherland.

Minutes of last meeting read and approved. The following bills were audited, allowed, and ordered passed: D. Shutte, 1 bar. flour, Mrs. Wolcott, $26.50; W. Schuster, banking Corrier's house, sawing one cord of wood (see above, $0.00); A. Dopp, plastering Wolcott house, poor, $21.50; Ashton & Relf, publishing health regulation, (cash, 20.30) or $40.60; J. B. Larson, plastering Mrs. Wolcott's house, $5.00; J. S. Ritchie, cleaning room after election, glazing, &c., $6.50; J. P. Larson, for clearing and grub-ing 6th St. from St. John's Ave. through 5th St., Superior City, to L Ave., $284.50; P. Fay, inspector election Nov. 6, 1866, $3.00; A. Sutherland, do. do. do., $3.00; R. Bardon, do. do. do., $3.00; A. C. Brown, clerk do. do., $3.00; R. Relf, do. do. do, $3.00; L. Myre, inspecting work on 5th and 6th street-, $2.00; A. Sutherland, do. do. do., $2.00; J. S. Ritchie, culvert on 5th St., Superior City, $5.00.

There being no further business, the board adjourned.

JAMES S. RITCHIE,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Nov.* 8, 1866.

Present: J. Meyer, chm.; P. Fay, A. Sutherland.

Minutes of last meeting read and approved. The following bills were audited, allowed, passed, and ordered paid: T. Sannon, 10½ days overseeing work Pokegema mil. bridge, $63.00; T. Garratz, do. do. do. do., $52.50; J. Collins, 6 days, do. do. do., $30.00; do. do., 1 day and team do. do. do., $5.00; J. Bardon, 6 days do. do. Pokegema do. do., $30.00; N. Puliott, 11½ days do. do. do., $69.00; L. Morrisett, 10½ days do. do. do., $63.00; James Wright & team do. do., 13½ days, $67.50; R. Relf, for editing delinquent tax-list order, $50.00; S. Myer, services collecting licenses do., $10.00; J. S. Ritchie, services collecting licenses, $10.00; J. P. Larson, extra work on 6th & 5th St. contract, $10.00; town clerk's office for coal oil, $2.00.

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A petition being presented to the board by J. D. Howard and signed by 50 citizens, the resolution called for by said petition was adopted, to wit:

Resolved, That persons may be allowed to make improvements on streets and avenues according to the plat of Superior of such streets and avenues as are not yet declared highways on the fol-

lowing conditions, to wit: That persons may clear off, plow, and ditch streets and avenues in the said town and use the same for cultivation till such time as may be wanted for highway purposes; then after examining the premises to pay the occupant a consideration for such improvement as may actually be worth to the town for road purposes.

There being no further business, the board adjourned.

JAMES S. RITCHIE,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Dec.* 3, 1866.

Special Meeting.

Present: J. Meyer, A. Sutherland.

Minutes of last meeting read and approved. The following bills were audited, allowed, and ordered passed and charged to military-road fund:

T. Sannon, 11 days' work on 3d St. bridge and Nettleton Ave. @ $6, $66; N. Poulliott, 11½ do. do. do. do., $69.00; D. Morrisette, 12 do. do. do., $72.00; J. Bardon, 11½ do. do. do. @ $5.00, $57.50; A. Gallagher, 11 do. do. do. do., $55.00; J. Peterson, 7½ do. do. do. do., $37.50; W. Crofford, 12 do. do. do., $60.00; N. Peterson, 5½ do. do. do., $27.50; R. Whelan, 3½ do. do. do., $17.50; W. Schuster, 3 do. do. do., $15.00; W. R. Butler, 5½ do. do. do., $27.50; J. Garratz, 4½ do. do., $22.50; J. Collins, 3 do. do. do., $15.00; H. Cobur, 3 do. do. do., $15.00; W. Schuster, 5 p's timber for bridge, $12.00; P. E. Bradshaw, 2,319 ft. 2-inch plank for bridge, $37.10; J. Bardon, 2 days on sidewalk @ $5, $10; Joe Collins, 2½ do. do. do., $12.50; A. Gallagher, do. do. do., $12.50; T. Sannon, 2½ do. do. do. @ $6.00, $15.00; W. Crofford, 1 do. do. do. at $5.00, $5.00; P. Odette, 1 do. on L Ave., $5.00; do. do., Jr., 1 do. do. do., $5.00; C. Sutherland, 1 do. do. do., $5.00; P. Burk, 1 do. do. do., $5.00; A. Bertrand, 1 231 do. do. do., $5.00; N. Nutt, ½ do. do. do., $2.50; L. Kuehli, 1 day do. do. do, $5.00; L. Kuehli, 1 team, $5.00; do. do. cross-piece & wood, $16.00; do. do. 2,035 ft. plank @ $22 per M, $44.77; D. Schutte, 1 pr. shoes for Mrs. Wolcott, poor, $6.00.

Resolved, That in consequence of the sickness of A. A. Hood, town clerk, the town board declined to have the tax books of 1866 extended, and hereby direct the clerk *pro tem.* to notify the clerk of the county board of supervisors of this refusal. D. Waterman, 1 day's work, culvert, Superior City, September 20th, $5.00; Jos. M. Nutt, 1 day's work, culvert, Superior City, Sept. 20th, $5.00; N. Pulliott, 48 ft. plank, $1.00; J. Sannon, ½ cord wood for ties, 3d St. and Nettleton avenue, $2.50.

There being no further business, the board adjourned.

JAMES S. RITCHIE,
Clerk pro Tem.

DEC. 10TH, 1866.

Special Meeting.

Present: J. Meyer, A. Sutherland.

Minutes of last meeting read and approved. The county treasurer handed in the sum of $2,075.64 of town orders, which were compared, counted, cancelled, and destroyed. The following bills were audited and ordered paid: Wm. Crawford, one cord wood, Mrs. Currier, $5.50; J. S. Ritchie, for extending tax book, adding the same, and services as clerk for town, $200.00.

There being no further business, the board adjourned.

J. S. RITCHIE,
Clerk pro Tem.

TOWN CLERK'S OFFICE, *Dec.* 22, 1866.

Delivered to town treasurer, D. Schutte, this day tax books containing levy for year 1866, to be collected as follows: For town purposes, $7,000; school, $2,475; State tax, $570.70; county tax, $7,700.37; dog tax, $75.00; total, $17,816.07.

The valuation of said Douglas county being $295,803.44, as added up by the clerk who made out the assessment-roll.

232 Received this 22d day of Dec., A. D. 1866, of James S. Ritchie, *pro tem.* clerk of town of Superior, the assessment-roll or tax books for the year 1866, purporting to call for the sum of seventeen thousand eight hundred and sixteen dollars ($17,816.00).

D. SCHUTTE,
Town Treasurer.

DEC. 26, 1886.

Special Meeting.

Present: J. Meyer, P. Fay.

Reading of minutes dispensed with. On motion — Gasath, a bill for sawing and splitting four cords of wood for Mrs. Currier passed, $16.00.

There being no further business, the board adjourned.

JAMES S. RITCHIE,
Clerk pro Tem.

233 I, W. G. Tubbs, clerk of the town of Superior, do hereby certify that I am the keeper of the records and office books kept in the office of town clerk of said town, in Douglas county and State of Wisconsin; and I do further certify that I have compared the foregoing copy with the original record of the town of Superior now remaining in the office of said town clerk for the time from April 2, 1861, to and including the year 1866, and that the foregoing is a true copy thereof — and the whole of such original.

W. G. TUBBS,
Town Clerk, Town of Superior.

234 Know all men by these presents that I, Mary E. Hayes, wife of Hiram Hayes, of the town of Superior, Douglas county, Wisconsin, have made, constituted, and appointed and by these presents do make, constitute, and appoint George C. Stone, of Ramsey county, in the State of Minnesota, my true and lawful attorney for me and in my name, place, and stead and in conjunction with my said husband to grant, bargain, and sell all or any part of parcel of such lands and real estate in said county of Douglas as belongs to me or in which I am or may be in any way entitled or interested, either separately and in my own right or as the wife of the said Hiram Hayes, for such sum or price and on such terms as to my said husband shall seem meet, and for me and in my name (but only in conjunction with my said husband) to make, execute, seal, acknowledge, and deliver good and sufficient deeds and conveyances for the same, either with or without covenants and warranty.

Giving and granting unto my said attorney full power and authority to do and perform (in conjunction with my said husband) all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this thirty-first day of May, in the year one thousand eight hundred and eighty-three.

MARY E. HAYES. [SEAL.]

In the presence of—
JAMES S. RITCHIE.
E. PETTERSON.

235 STATE OF WISCONSIN, } ss:
County of Douglas, }

On the thirty-first day of May, A. D. 1883, before me personally appeared Mary E. Hayes, wife of Hiram Hayes, to me personally known to be the individual described in and who executed the foregoing power of attorney, and acknowledged that she executed the same.

Witness my hand and official seal the day and year last aforesaid.

[SEAL.] JAMES S. RITCHIE,
Notary Public, Douglas County, Wis.

236 STATE OF WISCONSIN, } ss:
County of Douglas, }

I, Irwin W. Gates, treasurer of the county of Douglas and State of Wisconsin, do certify that in pursuance of law I caused to be advertised in the Gazette, a weekly newspaper published in the town of Superior, in said county, a list of all the lots and parcels of land returned to me on which the taxes assessed and due for the year

1866 remain unpaid, which said list was so published four successive weeks, in accordance with law, and was first so published on the third day of August, 1867, and last so published on the 31st day of August, 1867. I also posted a printed copy of notice of sale in a conspicuous place in my office, one in the post office, one at the door of the court-house, and one near the entry to my office on 2d street.

In testimony whereof I have hereunto affixed my official signature this the 6th day of September, A. D. 1867.

I. W. GATES,
County Treasurer.

Sworn and subscribed before me this sixth day of September, A. D. 1867.

JAMES S. RITCHIE,
Notary Public, Douglas Co., Wis.

The foregoing copy of the original affidavit mentioned in the testimony of witness Wm. J. Lealler is admitted in evidence without being certified, certificate thereto being waived, and the copy is admitted to be correct; but the complainant objects thereto as irrelevant and immaterial and because it is claimed by complainant that the statute of limitation have cured all defects, if any, in said affidavit and have barred any inquiry into such defects.

Feb. 28, 1891.

PINNEY & SANBORN,
Compl't's Sol'rs.

DEFENDANT'S EXHIBIT N.

Grantor, Douglas County, Wisconsin.

	Date of filing.	Grantor.	Grantee.	Instrument.	Description.	Sec.	Town.	Range.	Where recorded. Book.	Where recorded. Page.	To whom delivered.	Fee.
1870	April 1, 10 a.m.	Douglas county, per clerk.	Dunphy, Stephen	Tax deed	Lots in Superior	(See	record.)		1 of Tax Deeds	357-358	J. Bardon	1 "
	" 6, 12 m.	Douglas county, per clerk.	Macara, Mudie	" do. "	Lots & blocks in Superior.		do.		" " " "	358-359	M. Macara	1 "
	May 13, 9 a.m.	Douglas county, per clerk.	Ritchie, James S	" do. "	Property in Douglas county.		"		" " " "	372-373		
	June 25, 3.30 p.m	Douglas county, per clerk.	Salmon, Timothy	do.	Lots 343, 345, W. 6th St., Superior.				" " " "	365-366		1 "
	July 11, 11 a.m.	Douglas county, per clerk.	Hoffman, Sixtus	do.	Block 118, fr., Superior City.				" " " "	366-367	S. Hoffman	1 "
	August 17, 10 a.m.	Douglas county, per clerk.	Ritchie, James S	do.	Lots in Superior	(See	record.)		" " " "	369-370		
	" " 5 p.m.	Douglas county, per clerk.	Cowles, Samuel H	do.	Lot 4	36	44	10	" " " "	368-369	J. I. Moore	1 "
	Sept. 6, 6 p.m.	Douglas county, per clerk.	Ritchie, James S	do.	Lots & blocks in Superior.	(See	record.)		" " " "	374-375		
1870	Sept. 7, 3 p.m.	Douglas county, per clerk.	Hayes, Hiram	Tax deed	S. E. ¼	28	49	14	1 of Tax Deeds	378-379	H. Hayes	1 "
	" 13, 12 m.	Douglas county, per clerk.	Ritchie, James S	do.	Lots & blocks in Superior.	(See	record.)		" " " "	376-377		
	Oct. 31, " "	Douglas county, per clerk.	Macara, Mudie	do.	Lots 235, 237, W. 4th St., Superior.				" " " "	383-384	M. Macara	1 "
	Nov. 4, 10 a.m.	Douglas county, per clerk.	Macara, Mudie	do.	Lots & land	(See	record.)		" " " "	384-386	Do.	1 "
	Dec. 1, 3 p.m.	Douglas county, per clerk.	Wadsworth, Philip	do.	Lots in Ely addition.				" " " "	388-392	H. Hayes	3 25
	" 19, 5 p.m.	Douglas county, per clerk.	Anderson, E. W. Jr	do.	Lots & blocks in Superior & lot 2.	20	49	14	" " " "	398-399	E. W. Anderson	1 "
	" " 5 "	Douglas county, per clerk.	Anderson, E. W., Jr	do.	Block 34, fr., Superior City.				" " " "	399-400	Do.	1 "
	" " " "	Douglas county, per clerk.	Newton, F. J., & Louis D. Newton.	do.	Lot 3, W 3d St., Superior.				" " " "	401-402	Do.	1 "
	" 28, 2 p.m.	Davidson, Alexander.	Smith, William R	Warranty deed	S. ½ of N. W. ¼	17	48	13	L	387	A. Dandson	1 "
	" 31, " "	Douglas county, per clerk.	Osborne, Robert	Tax deed	Lot 8, block 28, Superior City.				1 of Tax Deeds	395-396	R. Osborne	1 "

238 COMPLAINANT'S EXHIBIT 3.

Grantor, Douglas County, Wisconsin.

	Date of filing.	Grantor.	Grantee.
1870	September 7, 3 p. m.....	Douglas county, per clerk.....	Hayes, Hiram.....

Instrument.	Description.	Sec.	Town.	Range.	Where rec'd.		To whom def'd.	Fee.
					Book.	Page.		
Tax deed.....	S. E. ¼.....	28	49	14	1 of Tax Deeds.	378-779	H. Hayes.....	1

STATE OF WISCONSIN, }
Douglas County, } *ss:*

I, E. V. Mundy, register of deeds of said Douglas county, State of Wisconsin, do hereby certify that I have compared the foregoing copy of the entry of the reception of a tax deed from said county to Hiram Hayes, dated Sept. 5th, 1870, and recorded Sept. 7, 1870, at 3 p. m., in vol. 1 of Tax Deeds, on pages 378 and 379, with the original entry of the reception thereof in the general index or reception book in my office, and that the foregoing is a true and correct copy of such original entry and of the whole thereof.

Witness my hand and official seal this 24th day of July, A. D. 1870.

[SEAL.]

E. V. MUNDY,
Register of Deeds,
By GEO. H. DETLING, *Deputy.*

239 COMPLAINANT'S EXHIBIT 2.

State of Wisconsin & Douglas County to Hiram Hayes. } B No. 11679. Tax Deed. Filed for Record June 2, A. D. 1882, at 10 o'clock a. m.

To all to whom these presents shall come, Greeting:

Whereas Hiram Hayes, assignee, of Douglas county, has deposited in the office of the county clerk of the county of Douglas, in the State of Wisconsin, a certificate of the treasurer of said county, whereby it appears, as the fact is, that the following-described pieces or parcels of land, lying and being situate in the county of Douglas, State of Wisconsin, to wit:

No. of cert.						Total. Am't.
In 325.	Undivided one-eighth of lots two (2), three (3), and four (4)	10	49	14	17.71	$4 37
"	Southeast quarter of southwest quarter	15	49	14	40	4 61
"	Northwest quarter of southeast quarter	21	49	14	40	2 96
"	West half of northeast quarter of southeast quarter	21	49	14	20	1 65
"	Southeast quarter	28	49	14	160	8 94
"	Undivided quarter of lots three (3), four (4), and five (5)	29	49	14	29.01	2 34
"	East half of southeast of southwest of *of* northwest quarter	34	49	14	5	60
"	Southeast quarter	12	48	15	160	6 59
"	Undivided half of north half of northeast qr	13	48	14	40	2 13
"	Southwest quarter of northwest quarter	3	48	13	40	2 10
"	Southeast quarter of southwest quarter	6	48	13	40	2 10
"	West half of northeast of northeast qr	9	48	13	20	94
"	Southwest quarter of northeast quarter	12	48	13	40	1 58
"	North half of northwest quarter and south half of northwest quarter	1	47	13	149	3 74

were for the non-payment of taxes sold by the treasurer of said county at public auction, at his office, in the town of Superior, in the county of Douglas, on the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, to the said Douglas county for the sum of forty-four dollars and sixty-five cents in the whole, which sum was the amount of taxes
240 assessed and due and unpaid on said parcels of land, together with the costs and charges of such sale due therewith at the time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser;

And whereas it further appears, as the fact is, that the owners or claimants of said lands have not redeemed from said sale the lands which were sold as aforesaid, and said lands are now unredeemed

from such sale, whereby said described lands have become forfeited and the said purchaser, his heirs or assigns, are entitled to a deed of conveyance thereof:

Now, therefore, know all men by these presents that the county of Douglas, in said State, and the State of Wisconsin, in consideration of said money aforesaid and the premises and in conformity to law, hath and hereby doth give, grant, and convey the parcels of land above described, together with the hereditaments and appurtenances, to the said Hiram Hayes and to his heirs and assigns, to their sole use and benefit forever.

In testimony whereof I, George F. Holcomb, the county clerk of the county of Douglas, State of Wisconsin, have executed this deed pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin and for and on behalf of the said State and of the county of Douglas aforesaid, and have hereunto subscribed my name officially and affixed the seal of the board of supervisors, at Superior, in the said county of Douglas, this first day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[COUNTY SEAL.] GEORGE F. HOLCOMB, [SEAL.]
County Clerk of the County of Douglas, State of Wisconsin.

Done in presence of—
W. CRANWELL.
D. GEO. MORRISON.

241 STATE OF WISCONSIN, } ss:
County of Douglas, }

Personally came before me, this first day of June, 1882, the within-named George F. Holcomb, county clerk of the county of Douglas, in the State of Wisconsin, to me known to be the person who executed the foregoing and within instrument, and acknowledged the same.

D. GEO. MORRISON,
[SEAL.] *Notary Public, Douglas County, Wisconsin.*

STATE OF WISCONSIN, } ss:
Douglas County, }

I, E. V. Mundy, register of deeds in and for said county and State, do hereby certify that I have carefully compared the within copy of tax deed with the original record thereof now in my office, and that the same is a true copy of such original record and of the whole thereof. I further certify that such original tax deed was recorded in my office on the 2d day of June, 1882, in vol. 2 of Tax Deeds, page 251.

Witness my hand and official seal this 22d day of July, A. D. 1890.

E. V. MUNDY,
[SEAL.] *Register of Deeds, Douglas County, Wisconsin,*
By GEO. H. DETLING, *Deputy.*

242 DEFENDANT'S EXHIBIT D.

State of Wisconsin & Douglas County to Hiram Hayes. | B No. 11679. Tax Deed. Filed for Record June 2, A. D. 1882, at 10 o'clock a. m.

To all to whom these presents shall come, Greeting:

Whereas Hiram Hayes, assignee, of Douglas county, has deposited in the office of the county clerk of the county of Douglas, in the State of Wisconsin, a certificate of the treasurer of said county, whereby it appears, as the fact is, that the following-described pieces or parcels of land, lying and being situate in the county of Douglas, State of Wisconsin, to wit:

No. of cert.						Total amount.
# 325..	Undivided one-eighth of lots two (2), three (3), & four (4)	10	49	14	17.71	$4 37
"	Southeast quarter of southwest quarter	15	49	14	40	4 61
"	Northwest quarter of southeast quarter	21	49	14	40	2 96
"	West half of the northeast quarter of southeast quarter	21	49	14	20	1 65
"	Southeast quarter	28	49	14	160	8 94
"	Undivided quarter of lots three (3), four (4), and five (5)	29	49	14	29.01	2 34
"	East half of southeast of southwest of northwest quarter	34	49	14	5	60
"	Southeast quarter	12	48	15	160	6 59
"	Undivided half of north half of northeast qr.	13	48	14	40	2 13
"	Southwest quarter of northwest quarter	3	48	13	40	2 10
"	Southeast quarter of southwest quarter	6	48	13	40	2 10
"	West half of northeast of northeast quarter	9	48	13	20	94
"	Southwest quarter of northeast quarter	12	48	13	40	1 58
"	North half of northwest quarter & south half of northwest quarter	1	47	13	149	3 74

were for the non-payment of taxes sold by the treasurer of said county at public auction, at his office, in the town of Superior, in the county of Douglas, on the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, to the said Douglas county for the sum of forty-four dollars and sixty-five cents in the whole, which sum was the amount of taxes assessed and due and unpaid on said parcels of land, together with the costs
243 and charges of such sale due therewith at the time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser;

And whereas it further appears, as the fact is, that the owners or claimants of said lands have not redeemed from said sale the lands which were sold as aforesaid and said lands are now unredeemed from such sale, whereby said described lands have become forfeited and the said purchaser, his heirs or assigns, are entitled to a deed of conveyance thereof:

Now, therefore, know all men by the presents that the county of Douglas, in said State, and the State of Wisconsin, in consideration of said money aforesaid and the premises and in conformity to law, hath and hereby doth give, grant, and convey the parcels of land above described, together with the hereditaments and appurtenances, to the said Hiram Hayes and to his heirs and assigns, to their sole use and benefit forever.

In testimony whereof I, George F. Holcomb, the county clerk of the county of Douglas, State of Wisconsin, have executed this deed pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin and for and on behalf of the said State and of the county of Douglas aforesaid, and have hereunto subscribed my name officially and affixed the seal of the board of supervisors, at Superior, in the said county of Douglas, this first day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[COUNTY SEAL.] GEORGE F. HOLCOMB, [SEAL.]
County Clerk of the County of Douglas, State of Wisconsin.

Done in presence of—

W. CRANWELL.
D. GEO. MORRISON.

244 STATE OF WISCONSIN, } ss:
County of Douglas, }

Personally came before me this first day of June, A. D. 1882, the within-named George F. Holcomb, county clerk of the county of Douglas, in the State of Wisconsin, to me known to be the person who executed the foregoing and within instrument, and acknowledges the same.

[SEAL.] D. GEO. MORRISON,
Notary Public, Douglas Co., Wis.

STATE OF WISCONSIN, } ss:
Douglas County, }

I do hereby certify that I have carefully compared the foregoing copy of record of a tax deed and acknowledgement with the original record in volume two of Tax Deeds, on page 251, in my office, and that the foregoing is a correct and true copy of said original record of tax deed and acknowledgement and of the whole thereof.

Witness my hand and seal of office this 29th day of August, A. D. 1890.

E. V. MUNDY,
[SEAL.] *Register of Deeds, Douglas County, Wisconsin.*

245 This indenture made this second day of June in the year of our Lord one thousand eight hundred and eighty-three between Hiram Hayes and Mary E. Hayes his wife, by her attorney-in-fact George C. Stone, herewith duly authorized by power of attorney parties of the first part and Edward Buchanan of the city and county of New York party of the second part, *party of the second part*; witnesseth, that the said parties of the first part, in consideration of the sum of six thousand four hundred dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever all that tract or parcel of land lying and being in the county of Douglas and State of Wisconsin described as follows, to wit: The southeast quarter of section twenty-eight (28) in township forty-nine (49) north of range fourteen (14) west of the fourth principal meridian, containing one hundred and sixty (160) acres more or less according to the United States survey, and situate in the county of Douglas and State of Wisconsin as aforesaid; to have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appurtaining, to the said party of the second part, his heirs and assigns forever, and the said Hiram Hayes one of the parties of the first part, for himself, his heirs, executors, and administrators doth covenant with the said party of the second part his heirs and assigns, that he is well seized in fee of the lands and premises aforesaid and has good right to sell and convey the same, in manner and form aforesaid; that the same are free from all incumbrances; and the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

246 In testimony whereof, the said parties of the first part, hereunto set their hands and seals the day and year first above written.

HIRAM HAYES. [SEAL.]
MARY E. HAYES, [SEAL.]
By GEO. C. STONE,
Her Attorney-in-fact.

Signed, sealed, and delivered in presence of—
J. H. GRUBERS.
LAFAYETTE SHAW.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

I, Lafayette Shaw, notary public within and for said county, do hereby certify that on this second day of June, A. D. 1883, personally came before me Hiram Hayes, to me well known as the same person described in and who executed the foregoing deed, and he acknowledged that he executed the same freely and voluntarily; and on the said second day of June, A. D. 1883, also personally came before me George C. Stone, to me known as the same person described in and who executed the within and foregoing deed as the attorney-in-fact of Mary E. Hayes, one of the within-named grantors, and to me known to be such attorney-in-fact, and he acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

[SEAL OF NOTARY.] LAFAYETTE SHAW,
Notary Public.

246½ [Endorsed:] A. No. 14537. Warranty deed. Hiram Hayes & wife to Edward Buchanan. S. E. ¼ 28, 49, 14. Office of register of deeds, county of Douglas, Wisconsin. I hereby certify that the within deed was filed in this office for record on the 28th day of April, A. D. 1884, at 10¼ o'clock a. m., and was duly recorded in Book "R" of Deeds, page 663. D. J. Morrison, register of deeds. Filed Feb. 28, 1891. F. M. Stewart, clerk.

247 This indenture made the thirteenth day of June in the year one thousand eight hundred and eighty-three, between Edward Buchanan of the city and county of New York, unmarried, party of the first part; and the Land & River Improvement Company, incorporated under the laws of the State of New Jersey, party of the second part, witnesseth; that the said party of the first part for and in consideration of the sum of sixteen thousand dollars lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to its successors and assigns, forever all that tract or parcel of land lying and being in the county of Douglas, State of Wisconsin described as follows, to wit; the southeast quarter (S. E. ¼) of section twenty-eight (28) in township forty-nine (49) north of range fourteen (14) west of the fourth principal meridian. Containing one hundred and sixty (160) acres more or less according to the United States surveys. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appurtaining, and the reversion and reversions, remainder and remainders, rents issues and profits thereof. And also all the estate, right, title, interest, dower & right of dower property, possession—claim or demand whatsoever, as well in law as in equity of the said party of the first part of in or to the above

fifth day of September in the year of our Lord one thousand eight hundred and seventy.

[COUNTY SEAL.] RICHARD RELF. [SEAL.]
Clerk of the County Board of Supervisors of the County of Douglas, State of Wisconsin.
By D. C. RELF, *Deputy.* [SEAL.]

Done in presence of—
E. C. BECKER.
THOS. CLARK.

251 STATE OF WISCONSIN, } ss:
County of Douglas, }

Be it remembered that on the fifth day of September, A. D. 1870, before the undersigned, a justice of peace in and for said county, personally appeared D. C. Relf, deputy clerk aforesaid, and acknowledged that he had executed the above deed as clerk of the board of supervisors of the county of Douglas, State of Wisconsin, for and on behalf of said county and State, for the purposes therein mentioned.

THOS. CLARK,
Jus. Peace, Douglas County, Wisconsin.

252 Description.	Sec.	Town.	Range.	Vol.	Pages.	To whom delivered.	Fees.
Lot 81 on W. 4th St., lot 19 W. 7th St.				1 Tax Deeds	357 & '8	James Bardon	1 00
Lots & blocks in Superior				1 " "	358, 359	M. Macara	1 00
Property in Douglas county				1 " "	372, 373		
Lots 343, 345 West 6th St.				1 " "	365, 366		1 00
Block 118 fr. "Superior City"				1 " "	366, 367	S. Hoffman	1 00
W. Erie, 105; Bay, 481, 483; River, 352				1 " "	369, 370		
Lot No. 4, sec. 36, T. 44, R. 10				1 " "	368, 369	I. I. Moore	
Lots & bl'ks in Superior	W.A.R.			1 " "	374, 375		
Southeast ¼ of	28	49	14	1 " "	378, 379	H. Hayes	1 00
Lots & bl'ks in Superior	W.A.R.			1 " "	376, 377		
Lots 235 & 237 4th street				1 " "	383, 384	M. Macara	1 00
Lots in Superior and lands				1 " "	384, 385, 386	M. Macara	1 00
Lots in "Ely's addition"				1 " "	388 to 392	H. Hayes	3 25
Lots & bl'ks in Superior & lot 2	20	49	14	1 " "	398, 399	E. W. A., Jr.	1 00
Fr. block 33, "Superior City"				1 " "	399, 400	" "	1 00
Lot 3 West 3rd St.				1 " "	401, 402	" "	1 00
South ½ N. W. ¼	17	48	13	L.	387	A. Davidson	1 00
Lot 8, block 28, "Superior City"				1 Tax Deeds	395, 396	Rob't Osborne	1 00

253 COMPLAINANT'S EXHIBIT No. 4.

Assessment-roll and Tax-list for the Town of Superior, in the County of Douglas, State of Wisconsin, for the Year 1857, Containing all the Taxable Property, Real and Personal, in said Town.

23—148

Names of persons taxed.	Description of land.	Section.	Town. N.	Range W.	No. acres.	Valuation of real estate.	Valuation of personal property.	Total valuation of all property.	Road tax.	School tax.	County tax.	State tax.	Total tax.	Remarks.	
A. Cluster, Chicago.	S. E.	28	49	14	160	480		480	3 36		5 76	96	10 08 / 50	$10.58 paid E. W. A., Jr...	$10 58

254 *Tax Sale of* 1859.

No. of certificate.	To whom assessed.	Description of lots sold.	Amount. Dollars.	Amount. Cents.	To whom sold.	By whom redeemed.	Amount. Dollars.	Amount. Cents.	To whom deeded.	Year.	Month.	Day.	Remarks.
Sept. 12. 68		S. E. ¼ sec. 28, T. 49, R. 14, 160 a. Certificate	8	27	Tax redemption sale, 1862. Tax 1864. C. S. Freeborn				Thos. A. Kiley	1863	May	21	Correct deed, Dec. 24, '64.
				25									
			8	52									

Ex. 4—2.

255 *Tax Sale of* 1862.

No. of certificate.	To whom issued.	Description of lots sold.	S.	T.	R.	Acres	Amount. Dollars.	Amount. Cents.	To whom sold.	By whom redeemed.	Amount. Dollars.	Amount. Cents.	To whom deeded.	Year.	Month.	Day.	Remarks.
2114		S. E. ¼	28	49	14	160	61	36		T. A. Kiley	69	00		1882	Nov.	1	
								25									
							61	61									

Ex. 4—3.

256 *Tax Sale of* 1863.

No. of certificate.	To whom assessed.	Description of lots sold.	Sec.	T.	R.	Acres	Amount. Dollars.	Amount. Cents.	To whom sold	By whom redeemed.	Amount. Dollars.	Amount. Cents.	To whom deeded.	Year.	Month	Day.	Remarks.
609	.....	N. E. ¼ of S. E. ¼ N. W. " " S. E. " S. E. " " S. E. " S. W. " " S. E. "	28	49	14	160	8	65	Douglas county	Thos. A. Kiley.	9	78	.....	1864	June...	15	
		Fees.....	.....	..	.....	.....	.....	25		8 90 Less..... 75							
							8	90		8 15 Int 1 63							

Ex. 4—4.

257 *Assessment-roll for the Town of Superior*, 49, *Range* 14, *for the Year* 1863.

Owners.	Description.	Section.	Town.	Range.	Acres.	Value of real estate.	Value of personal property.	Total value of all property.	State tax.	County tax.	Pauper tax.	Town tax.	County school tax.	District school tax.	Unpaid road tax.	Total.	Collector's fees.	Total taxes and fees.	Remarks.
T. A. Kiley	S. E. qr.	28	49	14	160	320	360 64	.....	1 08	7 20	.....	4 60	.....	72	.....	13 68	.....	.....	Paid T. A. Kiley Jan'y 28, '64. D. Waterman.

Ex. 4—5.

258 *Assessment-roll for the Town of Superior*, 49, *Range* 14, *for the Year* 1864.

Owners.	Description.	Section.	Town.	Range.	Acres.	Value of real estate.	Value of personal property.	Total value of all property.	State tax.	County tax.	Pauper tax.	Town tax.	County school tax.	District school tax.	Unpaid road tax.	Special.	Total.	Collector's fees.	Total taxes and fees.	Remarks.
T. A. Kiley.....	S. E.....	28	49	14	160	320	.....	360 64	1 44	7 21	.....	2 52	.....	72	.....	4 68	16 57	.....	.....	P'd M'ch 1, '65, by J. Newton.

Ex. 4—6.

T. Kiley.....	S. E.....	28	49	14	160	320	.....	360 64	1 44	7 21	.....	2 52	.....	72	.....	4 68	16 57	.....	.....	P'd M'ch 1, '65, by J. Newton.

Ex. 4—6.

259 *Delinquent List of Taxes in Douglas County for* 1865.

Name of person taxed.	Description.	Sec.	Town.	Range.	Acres.	Am't of tax.	
	S. E. ¼.....	28	.....	.....	160,00	10 42	P'd July 20, '66. T. Kiley. J. N.

Ex. 4—7.

260 *Assessment-roll for the Town of Superior, Range —, for the Year* 186–.

Name of person taxed.	Description.	Section.	Town.	Range.	Acres.	Value of real estate	Equalized value of all property.	Total.	Remarks.
	S. E.....	28	49	14	160	300	203 25	12 20	Ret.

The above is found on page 4 of assessment-roll for the year 1866.

Ex. 4—8.

261 1866.

Delinquent List of Taxes in Douglas County for 1866.

Name of person taxed.	Description.	Sec.	Town.	Range.	Acres.	Am't of tax.	
	S. E. ¼.....	28	49	14	160	12 81	"

Ex. 4—9.

262 *Tax Sale of Douglas County September 3d, 1867.*

No. of certificate.	To whom assessed.	Description of lots sold.	Amount. Dollars.	Amount. Cents.	Total. Dollars.	Total. Cents.	To whom sold.	By whom redeemed.	Amounts. Dollers.	Amounts. Cents.	To whom deeded.	Year.	Month.	Day.	Remarks.
118	.....	Und. ¼ of N. E. of S. W. of sec. 15, 49, 14.....	$2	55											
		S. E. ¼ of sec. 28, 49, 14, 25,56.	$14	08	.....	.....	Taxes 1867 on S. E. ¼ 28, $12.60	George Bosworth, 2 70 34	3	04	....	1868	Mar.	2	Rec'd this. H. Hayes.
		Fees	.....	30			Taxes '68 on S. E. ¼ 28, 20.77.								
					16	93	Hiram Hayes.....	.....	.....	.....	Hiram Hayes.....	1870	Sept.	5	

Ex. 4—10.

263 *Delinquent List of Taxes in Douglas County for* 1867.

Name of person taxed.	Description.	Sec.	Town.	Range.	Acres.	Am't of tax.	
	S. E.....	28	49	14	160	12 60	P'd by H. Hayes July 20th.

Ex. 4—11.

264 *Delinquent List of Taxes in Douglas County for* 1868.

Name of person taxed.	Description.	Section.	Town.	Range.	Acres.	Amount of tax.	
H. Hayes	S. E.....	28	49	14	160	20 77	Paid May 27th, 1869. H. Hayes.

Ex. 4—12.

	S. E.	28	49	14	160	20 77			Paid May 27th, 1869. H. Hayes.

Ex. 4—12.

265 *Assessment Roll for Superior, Town.* 49, *Range* 14, *for the Year* 1869.

Owner.	Description.	Section.	Town.	Range.	Acres.	Valuation.	State, county, school, & town taxes.	School dist. No. 1.	School dist. No. 2.	School dist. No. 3.	Road dist. No. 1.	Road dist. No. 2.	Taxes unpaid for previous years.	Fees.	Total.	Remarks.
Hiram Hayes	S. E.	28	49	14	160	480									73 48	

Ex. 4—13.

266 *Delinquent Tax List of Taxes in Douglas County for* 1869.

Name of person taxed.	Description.	Section.	Town.	Range.	Acres.	Fees.	Am't of tax.	Total.	Remarks.
Hiram Hayes	S. E.	28	49	14	160	117	23 48	24 65	S.

Ex. 4—14.

267 *Delinquent List of Taxes in Douglas County for* 1870.

Name of person taxed.	Description.	Sec.	Town.	Range.	Acres.	Amount of tax.	Fees.	Total.	Remarks.
Hiram Hayes	S. E. ¼	28	49	14	160	17 28	86	18 14	Paid July 31, '71. H. Hayes.

Ex. 4—15.

268

Tax Sale of Douglas County, May 1st, 1871.

No. of certificate.	To whom assessed.	Description of land sold.	Amount. Dolls	Amount. Cts.	Total. Dolls.	Total. Cts.	To whom sold.	By whom redeemed.	Amounts. Dolls.	Amounts. Cts.	To whom deeded.	Year	Month.	D'y.	Remarks.
181	H. Hayes.	N. W. of S. E. q'r and W. ½ N. E. of S. E., sec. 21, T. 49, R. 14, 60 *a.*	$14	55	10	....	.....	H. Hayes.	28 95 5 79 —— 34	74	.....	1872	Mar.	18th	
		Southeast q'r, sec. 28, T. 49, R. 14, 60 *a*	28	85	10		.....		14 65 2 93 ——						
		N. ½ of S. E. q'r, sec. 29, T. 49, R. 14, 60 *a*...	14	55	10	25	87	½ 1871..... $5 43	17	58	.....	"	"	"	
		Und. ¼ of lots 3, 4, & 5, sec. 29, T. 49, R. 14, 29 *a.*	6	45	10	11	70	1871..... 3 90	22 11	88 86	.....	1873	July.	26	
		Fees.....	.....	40				9 33			.....	1873	July.	26th	
					64	80	Douglas county.	H. Hayes.							

Ex. 4—16.

269

Delinquent List of Taxes in Douglas County for 1871.

Name of person taxed.	Description.	Sec.	Town.	Range.	Acres.	Amount of tax.	Fees.	Total.	Remarks.
H. Hayes.....	S. E. q'r.	28	49	14	160	20 68	1 03	21 71	Paid Sep. 2, '72.

Ex. 4—17.

270

Delinquent List of Taxes in Town of Superior for 1872.

Name of person taxed.	Description.	Sec.	Town.	Range.	Acres.	Am't of tax.	Years for which taxes remain unpaid.	Fees.	Total.	When and by whom paid.
H. Hayes.....	S. E. ¼.....	28	49	14	160	27 60	.....	1 38	28 98	Paid May 11, '74. H. Hayes.

Ex. 4—18.

H. Hayes	S. E. ¼	28	49	14	160	27 60			1 38	28 98	Paid May 11, '74.	H. Hayes.

Ex. 4—18.

271 *Tax Roll Town of Superior, 1873, Town. 49, Range 14.*

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, county, school, & town tax.	School district tax.	Year for which taxes remain unpaid	Total amount of tax.	When and by whom paid.
Hiram Hayes	S. E. ¼	28	49	14	160	800				18 40	P'd by H. Hayes Dec. 31, '73.

Ex. 4—19.

272 *Record of Statement of Land Sold at Tax Sale of May 11th, 1875.*

No. of certificate.	To whom assessed.	Description.	Amount. $	Amount. Cts.	Total amount. $	Total amount. Cts.	To whom sold.	By whom redeemed.	Amount $	Amount Cts.	To whom deeded.	Year.	Month.	Day.	Receipt of amount.
490	Hayes, H.	Town 49, range 14: Southeast q'r sec. 28	14	69			Assigned to L. F. Wheelock, Apr. 7, '76.	Und. ½ Hiram Hayes.							
		N. ½ of S. E. " 29	7	47	3	78	Tax '75, $3.04	Und. ½ Douglas county..	3	78		1881	Sept.	21	
		Und. ½ of lots 3, 4, & 5, sec. 29.	3	37			Assigned to L. F. Wheelock, April 7, '76.								
		Und. ½ of S. E. of S. W. of N. W. q'r, sec. 34.		70			Assigned to L. F. Wheelock, April 7, '76.								
		Fees		40											
					26	63	Douglas county.								

Ex. 4—20.

273 *Tax Roll for the Town of Superior, County of Douglas, for the Year 1875, Town. 49, Range 14.*

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, county, school, and town tax.	School district tax.	Total amount of tax.	When and by whom paid.	Date of payment. Month.	Day.	Year.
H. Hayes	S. E. ¼	28	49	14	160	240	Tax	1874	9 60	H. Hayes	2	17	'76

Ex. 4—21.

274

Record of Statement of Lands Sold at Tax Sale of May 8th, 1877.

No. of certificate.	To whom assessed.	Description—town 49, range 14. Sec.	Town.	Range.	Acres.	Amount. $	Cts.	Total amount. $	Cts.	To whom sold.	By whom redeemed.	Amount. $	Cts.	To whom deeded.	Year.	Month.	Day.	Receipt of amount.
325	Hiram Hayes..	S. E. ¼..... 28	49	14	160	8	80	H. Hayes.	Douglas county..	.....	.....	.....	.....	Hiram Hayes..	1882	June	1	

Ex. 4—22.

275

(*Record of Statement of Lands Sold at Tax Sale of May 14th, 1878.*)

No. of certificate.	To whom assessed.	Description. Sec.	Town.	Range.	Acres.	Amount. $	Cts.	Total Amount. $	Cts.	To whom sold.	By whom redeemed.	Amount. $	Cts.	To whom deeded.	Year.	Month.	Day.	Receipt of amount.
412	H. Hayes..	S. E. ¼..... 28	49	14	160	11	30	H. Hayes.	.....	.....	Land & River Improvement Co.	31	75	.....	1885	July	14	Rec'd this, H. Hayes.

Ex. 4—23.

276

Record of Statement of Lands Sold at Tax Sale of May 13th, 1879.

No. of certificate.	To whom assessed.	Description.	Sec.	T.	R.	Acres.	Amount. $	Cts.	Total Amount. $	Cts.	To whom sold.	By whom redeemed.	Amount. $	Cts.	To whom deeded.	Year.	Month.	Day.	Receipt of amount.
434	H. Hayes..	S. E. ¼ of S. W. ¼	15	49	14	40	3	40											
		Southeast q'r..	28	49	14	160	6	55											
		Southeast q'r..	12	48	15	160	5	50											
		Northwest q'r..	1	47	13	148.34	3	01											
		Fees.....	.....	.....	.....	.....	.....	25											
									18	71	Douglas county..	Hiram Hayes..	18	71	.....	1880	Jan'y	7	

Ex. 4—24.

	Northwest q'r..	1	47	13	148 34	3	91												
	Fees.....						25												
								18	71	Douglas county..	Hiram Hayes..	18	71	.....	1880	Jan'y	7		

Ex. 4—24.

277 *Record of Statement of Lands Sold at Tax Sale of May 11th, 1880.*

No. of certificate.	To whom assessed.	Description.	Sec.	T.	R.	Acres.	Amount. $	Cts.	Total amount. $	Cts.	To whom sold.	By whom redeemed.	Amount. $	Cts.	To whom deeded.	Year.	Month.	Day.	Receipt of amount.
400	Hayes, H.....	Und. 1/8 of lot 2, 3, 4	10	49	14	17.71	3	70											
		S. E. 1/4 of S. W. 1/4..	15	do.	do.	40	4	15											
		N. W. 1/4 of S. E. 1/4 & W. 1/2 of N. E. of S. E. 1/4...	21	do	do	60	4	40											
		Southeast q'r.....	28																
		Und. 1/2 N. 1/2 of S. E. 1/4	29	do.	do.	160	10	65											
		Do. 1/4 lot 3, 4, 5....	29	do.	do.	40	2	20											
		Fees.....					2	18											
								25	27	53	Douglas county.	Hiram Hayes	27	53	.....	1880	Oct.	6	

Ex. 4—25.

278 *Delinquent Tax Roll for the Town of Superior, County of Douglas, for the Year* 1880.

Owner.	Description.	Section.	Town.	Range.	Acres.	Valuation.	State, school, county, and town tax.	School tax.	Total amount of tax.	No. of receipt.	When & by whom paid.	Date of payment. Month.	Day.	Year.
H. Hayes	S. E. 1/4	28	49	14	160	.....	14 43	13.77 73	15 16	307.57	H. Hayes	5	15	'81

Ex. 4—26.

279

Record of Statement of Lands Sold at Tax Sale of May 16th, 1882.

No. of certificate.	To whom assessed.	Description.	Sec.	Town.	Range.	Acres.	Amount. $	Amount. Cts.	Total amount. $	Total amount. Cts.	To whom sold.	To whom redeemed.	Amount. $	Amount. Cts.	To whom deeded.	Year.	Month.	Day.	Receipt of amount.
162	Hiram Hayes.	S. E. of S. W. ¼ ..	15	49	14	40	23	83	.....	.....	.....	Land & River Imp. Co.	42	80	.....	1885	July	14	Rec'd this. H. Hayes.
		Und. ½ of N. W. of S. E. ¼ & W. ½ of N. E. ¼ of S. E. ¼	21	49	14	60	6	14											
		Southeast ¼	28	49	14	160	31	60	.....	.....	.....	Land & River Imp. Co.	56	83	.....	1885	July	14	Rec'd this. H. Hayes.
		N. ½ of S. E. ¼	20	49	14	80	15	97											
		Fees	...	...	...	...	.....	25											
									77	88	H. Hayes	.....	.....	.....	H. Hayes	1887	April	23	

Ex. 4—27.

280

Delinquent Tax Roll for the Town of Superior, County of Douglas, for the Year 1882.

Owner.	Description.	Section.	Town.	Range.	Acres.	Valuation.	State, school, county, & town tax.	School tax.	Total amount of tax.	No. of receipt.	When & by whom paid.	Date of payment. Month.	Day.	Year.
Hiram Hayes.....	S. E. ¼	28	49	14	160	....	.....	.....	21 59	35a	H. Hayes	5	10	'83

Ex. 4—28.

..... Hayes.....	S. E. ¼	28	49	14	160	.....	.....	.....	21 59	35a	H. Hayes	5	10	'83

Ex. 4—28.

281 *Tax Roll for the Town of Superior, County of Douglas, for the Year* 1883—*Dist. No.* 2.

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, school, county, & town tax.	School tax.	Total amount of tax.	No. of receipt.	Amount paid.	When and by whom paid.	Date of payment. Month.	Day.	Year.
H. Hayes.....	S. E. ¼.....	28	49	14	160	3,200 325	48 90	16 96	68 21	388c.	68 21	H. Hayes.....	Jan'y.....	'29	'84

Ex. 4—29.

282 *Tax Roll for the Town of Superior, County of Douglas, for the Year* 1884.

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, school, county, and town tax.	School tax.	Collection fees.	Total amount of tax.	No. of receipt.	When & by whom paid.	Date of payment. Month.	Day.	Year.
—— Buchanan.....	S. E. ¼.....	28	49	14	160	3,200 00	70 40	13 40	4 20	88 00	14 A.	L. & R. Imp. Co., per J. H. H.	Dec.....	30	1884

Ex. 4—30.

283 *Tax Roll for the Town of Superior, County of Douglas, for the Year* 1885—*Township* 49, *Range* 14.

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, school, county, and town tax.	School tax.	Collection fees.	Total amount of tax.	No. of receipt.	When & by whom paid.	Date of payment. Month.	Day.	Year.
Land & River Improvement Co.....	S. E. ¼.....	28	49	14	160.00	3,200 00	64 00	5 59	2 47	72 06	31 A.	L. & R. Imp. Co.....	Jan.....	9	1886

Ex. 4—31.

284 *Tax Roll for the Town of Superior, County of Douglas, for the Year* 1886.

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, school, county, & town tax.	School tax.	Collection fees.	Total amount of tax.	No. of receipt.	When and by whom paid.	Date of payment. Month.	Day.	Year.
Land & River Imp. Co.	S. E. ¼.....	28	49	14	160	3,200	.....	.....	.....	72 66	A 63	Land & River I. Co.	Jan.....	10	1887

Ex. 4—32.

285 *Tax Roll for the Town of Superior, County of Douglas, for the Year* 1887.

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, school, county, and town tax.	Village tax.	Delinquent highway tax.	School tax.	Total amount of tax.	No. of receipt.	When & by whom paid.	Date of payment. Month.	Day.	Year.
Thos. Bardon ..	S. E. ¼	28	49	14	160	12,800	138 24	107 52	.....	66 56	312 32	A 36.	Land & River I Co.	Jan	10	1888.

Ex. 4—33.

286 *Tax Roll for the Village of Superior, County of Douglas, for the Year* 1888.

Owner.	Description.	Sec.	Town.	Range.	Acres.	Valuation.	State, school,& county tax.	School tax.	General village tax.	Special tax.	Special tax.	Collection fees	Total am't of tax.	No. of receipt.	By whom paid.	Date of payment. Month.	Day.	Year.
L. & R. I. Co.....	S. E. ¼...	28	49	14	160.00	32,000	198 40	112 70	272 00	.....	.....	29 15	612 15	C 68	L. & R. I. Co..	Jan	24	'89

Ex. 4—34.

287 I hereby certify that the annexed and foregoing is a true and correct transcript of the tax rolls, delinquent rolls, and certificate books of every name and nature on file or of record in my office relating or in anywise appertaining to the assessment of taxes upon or to the sale for taxes of the following-described lands, viz:

S. E. ¼ of section 28, t'p 49, R. 14, situated in the county of Douglas, State of Wisconsin, from years 1857 to 1888, inclusive, and of the whole thereof.

In testimony whereof I have hereunto set my hand this eighteenth day of July, A. D. 1890.

J. F. BRISTOFF, JR.,
Co. Treasurer,
By M. J. LEADER, *Deputy*.
CHARLES LAGRO,
County Clerk of Douglas Co., Wisconsin.

288 Afterwards, to wit, on the 27th day of December, 1890, in the December term, A. D. 1890, of said court, in the records and proceedings thereof, before the Hon. R. Bunn, judge, is the following entry:

Order Setting Down Case for Hearing.

THE LAND AND RIVER IMPROVEMENT COMPANY
vs.
THOMAS BARDON.

This day came the complainant, by its solicitors, and on its motion it is ordered that this cause be set down for final hearing on the pleadings & proofs Feb'y 26, 1891.

Afterwards, to wit, on the 28th day of February, 1891, in the December term, A. D. 1890, of said court, in the record of the proceedings thereof, before the Honorable R. Bunn, judge, is the following entry:

THE LAND AND RIVER IMPROVEMENT COMPANY
vs.
THOMAS BARDON.

This day the final hearing of this cause is concluded and cause taken under advisement by the court.

289 Afterwards, to wit, on the eleventh day of March, 1891, in the December term, A. D. 1891, of said court, in the record of proceedings thereof, before the Honorable R. Bunn, judge, the final decree — entered as follows:

Ex. 4—34.

290 Circuit Court *for* the United States for the Western District of Wisconsin.

THE LAND & RIVER IMPROVEMENT COMPANY
vs.
THOMAS BARDON. } In Equity.

December stated term, A. D. 1890, to wit, the 11th day of March, A. D. 1891, being the 70th day of said term.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit, that the said complainant, The Land and River Improvement Company, is the lawful owner in fee simple of the tract of land described in the original and supplemental bill in this cause and is in possession thereof and well entitled to have and hold the same, to wit, the southeast quarter of section number twenty-eight (28), in township number forty-nine (49) north, range fourteen (14) west, in Douglas county, Wisconsin, and that the claim of title thereto of the said defendant under and by virtue of a certain deed of conveyance from James D. Ray to James Bardon, dated March 6, A. D. 1878, and recorded in the office of the register of deeds for Douglas county, in volume N of Deeds, on page 363, and under and by virtue of a deed of conveyance from the said James Bardon to the said defendant, Thomas Bardon, or otherwise, is void and of no force and effect whatever.

And it is further ordered, adjudged, and decreed that the said defendant, Thomas Bardon, and all persons claiming or to claim said premises or any part thereof by, through, or under him since the commencement of this suit, his and their agents and attorneys, be, and they are hereby, perpetually enjoined and restrained
291 from setting up, asserting, or attempting to put in force or use any claim to any right, title, or interest in or to said premises or any part thereof under or by virtue of said deeds hereinbefore described or either of them or otherwise, and that the said defendant, Thomas Bardon, his agents, attorneys, and counsel, and all persons acting in his or their aid, be, and they are hereby, forever enjoined and restrained from further prosecuting or proceeding in any way or manner with or in a certain action commenced in the circuit court of the State of Wisconsin for Douglas county by the said Thomas Bardon on or about the 21st day of July, A. D. 1890, against the said complainant and one John Darley, its tenant, to recover possession of said premises and pending and undetermined in said circuit court for Douglas county.

And it is further ordered, adjudged, and decreed that the said defendant, Thomas Bardon, do release to the said complainant, by a proper deed of release to be duly witnessed and acknowledged, all claim to said tract of land within thirty days after service upon him of a certified copy of this decree, and that the said Thomas Bardon do pay to the said The Land & River Improvement Company and that it do recover against him the costs and disbursements of this suit, to be taxed and entered upon the foot of this

decree by the clerk of this court, and that execution do issue therefor according to law, and that this decree be recorded in the office of the register of deeds for Douglas county.

Dated March 11th, 1891, A. D.

By the court:

R. BUNN, *Judge.*

The costs of the plaintiff, The Land & River Improvement Company, taxed and allowed — three hundred ninety-six dollars one cent, this 11th day of March, 1891.

F. M. STEWART, *Clerk.*

Costs, $396.01.

292 Afterwards, to wit, on the 25th day of March, 1891, came the defendant, by his counsel, and filed his petition for an appeal to Supreme Court of the United States. The petition & order allowing the appeal — as follows:

293 Circuit Court of the United States for the Western District of Wisconsin.

THE LAND & RIVER IMPROVEMENT COMPANY, Complainant,
vs.
THOMAS BARDON, Defendant. } In Equity.

The above-named defendant, conceiving himself aggrieved by the final decree entered in the above-entitled cause at the December term, A. D. 1890, of said court, to wit, on the 11th day of March, A. D. 1891, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

W. F. BAILEY,
Defendant's Solicitor.

The foregoing appeal is hereby allowed and the penalty of the bond to be given by the defendant on such appeal to operate as a supersedeas is hereby fixed at the sum of five hundred dollars.

Dated March 25th, 1891.

By the court:

R. BUNN, *Judge.*

294 And afterwards, to wit, on the 4th day of April, 1891, came the defendant, by his counsel, and filed his bond on appeal; which said bond & approval is as follows, to wit:

295 Circuit Court of the United States for the Western District of Wisconsin.

THE LAND & RIVER IMPROVEMENT COMPANY, Complainant, *vs.* THOMAS BARDON, Defendant. } In Equity.

Know all men by these presents that we, Thomas Bardon, of the city of Ashland, in the county of Ashland, in said western district of Wisconsin, as principal, and W. M. Tomkins and Geo. W. Harrison, of the same place, and James Bardon, of Superior, in said district, as sureties, are held and firmly bound unto The Land & River Improvement Company, said complainant, in the sum of two hundred dollars, to be paid to the said The Land & River Improvement Company, its certain attorney, successors, or assigns: to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 28th day of March, 1891.

Whereas lately, at a circuit court in and for the western district of Wisconsin in a suit pending in said court between the said The Land & River Improvement Company, complainant, and the said Thomas Bardon, as defendant, a final decree was rendered against the said Thomas Bardon, and the said Thomas Bardon having taken an appeal, which appeal has been allowed by the said circuit court, to the Supreme Court of the United States to reverse the said decree in the aforesaid suit:

Now, therefore, the condition of this obligation is such that if the said Thomas Bardon shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise to remain in
296 full force and virtue.

THOMAS BARDON. [SEAL.]
W. M. TOMKINS. [SEAL.]
GEO. W. HARRISON. [SEAL.]
JAMES BARDON. [SEAL.]

Signed, sealed, and delivered in presence of—
PETER LAMAL.
JOHN BECK.

UNITED STATES OF AMERICA, *Western District of Wisconsin*, } *ss.*:

Thomas Bardon and W. M. Tomkins and G. W. Harrison, being severally and duly sworn, doth each for himself depose and say that he is one of the sureties named in and who has executed the foregoing bond, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

____ ____.
____ ____.
____ ____.

Subscribed and sworn to before me this twenty-eighth day of March, 1891.

[SEAL.] PETER LAMAL,
Notary Public, Ashland County, Wisconsin.

UNITED STATES OF AMERICA,
Western District of Wisconsin.

James Bardon, being duly sworn, doth depose and say that he is one of the sureties named in and who executed the foregoing bond, and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

JAMES BARDON.

Subscribed and sworn to before me this 28th day of March, 1891.

[SEAL.] T. C. RYAN,
Notary Public.

I hereby approve the within bond and the sufficiency of the sureties thereto.

Approved Apr. 4, 1891.

R. BUNN, *Judge.*

297 United States Circuit Court, Seventh Circuit, Western District of Wis.

LAND & RIVER IMPROVEMENT COMPANY
vs.
THOMAS BARDON. } In Equity.

To the Land and River Improvement Company:

Whereas Thomas Bardon has lately appealed from a decree lately entered in the circuit court of the United States for the western district of Wisconsin, made in favor of you, the said Land and River Improvement Company, and has filed the security required by law, you are therefore hereby cited to appear before the Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Madison, in the western district of Wisconsin, in the seventh circuit, this 25th day of March, A. D. 1891.

R. BUNN, *Judge.*

Service of foregoing citation hereby admitted.

PINNEY & SANBORN,
Sol'rs for Compl't.

297½ [Endorsed:] U. S. circuit court, seventh circuit, west. dist. of Wis. Land & River Imp. Co. *vs.* Thomas Bardon. Citation.

298 UNITED STATES OF AMERICA, }
Western District of Wisconsin, } ss:

I, F. M. Stewart, clerk of the circuit court of the United States of America for the western district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with the originals now in my custody and they are true copies of their respective originals and are correct transcripts therefrom and of the whole thereof, now on file and remaining of record in my office, being transcript of record in Land & River Imp. Co. *vs.* Thomas Bardon, on appeal to U. S. Supreme Court.

Seal U. S. Circuit Court, Western District of Wisconsin.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said western district of Wisconsin, this 20th day of April, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the said United States the one hundred and fifteenth.

F. M. STEWART, *Clerk.*

Endorsed on cover: Case No. 14,596. W. Wisconsin C. C. U. S. No. 448. Thomas Bardon, appellant, *vs.* The Land and River Improvement Company. Filed April 27, 1891.